

Legislative Audit Division

State of Montana



Report to the Legislature

December 1997

Performance Audit

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Administration and Enforcement of State Building Codes in Montana

Department of Commerce

This report contains recommendations for improvements to the administration and enforcement of state building codes in Montana. The recommendations address:

- ▶ The need to conduct a comprehensive review of statutory exemptions granted to certain buildings and equipment installations.
- ▶ Steps the Department of Commerce could take to improve services provided by municipal and county building code programs.
- ▶ Interagency coordination and communication.
- ▶ Improvements to Building Codes Bureau operations through increased management emphasis on staff training, planned communication, and development of an operational procedures manual.

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Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy. In performing the audit work, the audit staff uses audit standards set forth by the United States General Accounting Office.

Members of the performance audit staff hold degrees in disciplines appropriate to the audit process. Areas of expertise include business and public administration, statistics, economics, computer science, communications, and engineering.

Performance audits are performed at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

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December 1997

The Legislative Audit Committee
of the Montana State Legislature:

We conducted a performance audit of the administration and enforcement of state building codes in Montana. The Department of Commerce and local governments share responsibility for code enforcement. This report examines the structure used to administer and enforce codes in the state. It contains recommendations for improvements to both department and local government code enforcement programs. A written response from the department is included at the end of the report.

We appreciate the cooperation and assistance of the Department of Commerce and local governments during the audit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott A. Seacat", with a long, sweeping horizontal line extending to the right.

Scott A. Seacat
Legislative Auditor

Legislative Audit Division

Performance Audit

Administration and Enforcement of State Building Codes in Montana

Department of Commerce

Members of the audit staff involved in this audit were Lisa Blanford, Jim Nelson, and Kent Wilcox.

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Appointed and Administrative Officials

Department of Commerce

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¹ Changed from Building Codes Bureau to Building Codes Division effective November 1997.

Introduction

Montana adopted statewide building construction standards in 1969. Statewide building construction standards are a collection of uniform standards and requirements for the construction, installation of equipment in, and materials to be used in buildings. They are based on what is generally accepted as good standards of construction. These uniform standards are developed by nationally recognized organizations and are intended to provide basic minimum provisions considered necessary for protection of property, and for the health, safety, and welfare of the public. Groups of individual codes are commonly referred to as the "state building code." There are currently 12 nationally developed uniform and model codes which have been incorporated by reference and constitute the "state building code" in Montana.

Statutes provide the Department of Commerce is the sole agency to promulgate building regulations. This provision is designed to ensure a uniform set of standards exists which applies to construction statewide. As a general rule, the department adopts national model codes. The department has statutory authority to amend model codes.

The Department of Commerce has general responsibility for enforcing building codes in Montana. The department has jurisdiction over most construction in the state. Local governments, either city or county, can elect to enforce codes within their jurisdiction. A local government may adopt all or part of the state building code and enforce those sections it has chosen to adopt. Responsibility for enforcing that part of the state building code not adopted by the local government remains with the department. For example, a city could adopt and enforce the Uniform Building Code yet leave enforcement of the mechanical, plumbing, and electrical codes within the city limits to the department. There is no difference between the building code administered by the department and the code administered by local governments: the construction standards are the same.

The department and local governments use essentially the same methods to monitor compliance with the "state building code."

Report Summary

They rely on issuing permits, reviewing construction plans, and conducting inspections.

Montana's Code Enforcement Program

One of the objectives of this audit was to determine whether or not there is a need for adopting and enforcing building codes in Montana. Another objective was to examine the structure in which the state and local governments enforce building codes to determine whether the code enforcement function is performed in the most efficient and effective manner. We examined operations of the department and local government code enforcement programs and their working relationship with each other. The following sections address our findings.

Model Codes Protect the Public

Montana is one of forty states which have elected to mandate a state code to cover building construction and installation of related equipment. According to various construction industry groups, insurance industry representatives, fire officials, and model code groups, Montana's program which sets minimum standards and monitors compliance with those standards, provides a number of benefits:

- Ensure the integrity of the structure and adjacent structures.
- Save lives and property.
- Mitigate natural hazards.
- Ensure installed products are safe.
- Confirm qualified installers are on the job.
- Independent review of contractors' work.
- Consumer comfort knowing independent review was done.
- Lower insurance premiums.
- Alleviate pressure on local fire services.
- Increase property values.

Many groups strongly advocate or support the need for and use of codes. There is strong justification for establishing minimum levels of building standards and a system of reviewing adherence to minimum standards. The adoption and enforcement of uniform codes provides a benefit to the citizens of the state.

Montana's Code Enforcement Structure

Montana has a very decentralized system of enforcing the state building code. Administration and enforcement is done by the Department of Commerce and local governments. Fifty-four local governments have some scope of enforcement programs. The Department of Commerce is generally responsible for everything not inspected by local governments. Given the large amount of work and the large physical area to be inspected, it is unrealistic for the Department of Commerce or local governments to administer the state building code program alone. A system which relied entirely on local-level enforcement would not be very efficient especially in the more rural counties which have a low number of inspection sites. On the other hand, placing all regulatory authority with the state would have its drawbacks. Local governments would have no oversight of construction occurring in their communities. In addition, local programs can be more efficient in areas with concentrated construction. Montana's current system of combined state and local-level regulation makes sense. It can provide an effective and efficient means of enforcing the state building code.

Law Creates Gaps in Coverage

In Montana, the legislature has exempted entire classes of buildings from meeting minimum building and mechanical code requirements. Statutes specifically exempt:

- Residential buildings containing less than five dwelling units or their attached to structures.
- Any farm or ranch building.
- Any private garage or private storage facility used only for the owner's own use.
- Mines and buildings on mine property.
- Some petroleum refinery, pulp, and paper mill buildings.

In addition, some plumbing and electrical installations are exempt from complying with plumbing or electrical codes. As a result of the statutory exemptions, these buildings and equipment installations do not have to be constructed or installed according to code.

Because they are statutorily exempt from meeting codes, they are also exempt from department permitting and inspection activities.

Statutes establishing the state building code and the code enforcement program have been in existence for almost 30 years. Since the

Report Summary

programs inception, several agencies have been involved with oversight and many groups have sought exceptions from coverage. Other groups have sought to eliminate exemptions. As a result, bills have been introduced almost every legislative session which have amended the program's statutory provisions. Over the years the coverage of the program has become convoluted.

Because of the many changes made over the years and the many parties with an interest in the state building code and enforcement program, it is difficult for the legislature to visualize overall building code coverage in the state. Changes that have been made to the system have been accomplished in a piecemeal manner without any comprehensive evaluation. Because the department is generally responsible for administering the state building code, the department should take a lead role in conducting this comprehensive evaluation. The department could accomplish this by forming a task force of local governments, building contractors, construction-related trade groups, insurance industry representatives, fire officials and others to review statutes and administrative rules and determine whether changes need to be made related to the current exemptions.

Improving Local Code Enforcement Programs

The 1997 Legislature directed the Department of Commerce to assume a stronger oversight role over local government building code programs. House Bill 388 directs the department to take an active role with city and county programs and mandates a method of oversight. Effective July 1, 1998, the department will be required to continually oversee local government building code enforcement programs. Given this re-affirmed oversight role and based on audit work conducted, we believe the department can improve services being provided by municipal and county building code programs. In order to achieve this, the department needs to implement the following steps:

1. Ensure city and county programs adopt the correct codes.
2. Organize training for local building officials, plan reviewers, and inspectors.
3. Work towards achieving more uniform interpretation of codes.
4. Examine city and county building code program finances.

5. Conduct thorough re-certification of local government building code programs.

Interagency Coordination and Communication

As a regulator of building construction, the Department of Commerce, Building Codes Bureau interacts with other state agencies during the course of administering and enforcing model codes. There are two areas where interagency relations could be improved.

Interaction with Fire Prevention and Investigation Bureau

Both the Department of Commerce and the Department of Justice, Fire Prevention and Investigation Bureau conduct inspections of buildings. While both agencies are responsible for protecting life and property through enforcement of their respective codes, there is confusion regarding the authority and jurisdiction of each agency and a lack of overall communication and coordination between agencies. The agencies need to clarify their respective roles and coordinate efforts. Currently, there is no mechanism for addressing issues or resolving conflicts. The Department of Commerce should seek a Memo of Understanding with the Department of Justice which specifies jurisdiction of each agency and how agency activities will be coordinated.

Interaction with the Board of Plumbers

The Department of Commerce, Building Codes Bureau, assists licensing boards in monitoring adherence to licensing laws. There is a disagreement between the department and the Board of Plumbers regarding when services of licensed plumbers are needed. Plumbing licensure-related statutes are confusing. As a result of this confusion, the department and the Board of Plumbers have been offering conflicting opinions and may have improperly enforced licensing and permitting requirements. It would be beneficial for the Department of Commerce and the Board of Plumbers to work together and seek clarification of this issue through an Attorney General's opinion and pursue additional legislative clarification if needed.

Report Summary

Department Operations

The daily operations of the Department of Commerce, Building Codes Bureau, center around its inspection function. This is where the bulk of the bureau's workload occurs. The bureau also is responsible for administrative-related duties such as budgeting, rule-making, and processing municipal requests for extended jurisdiction. We reviewed various operational aspects of the Building Codes Bureau and found a number of areas operate as intended and provide the bureau with assurance of proper program operation. We did identify several aspects of the management and operation of the bureau which could be improved with increased management emphasis. These areas include: staff training, planned communication, and developing an operation procedures manual.

Chapter I

Introduction

Introduction

The Legislative Audit Committee requested a performance audit of the activities associated with the adoption and enforcement of the state building code. In Montana, building codes are enforced by both the state and local governments. It is a shared responsibility. This audit report presents information and recommendations pertaining to the building code enforcement programs administered by the Department of Commerce, municipalities, and counties.

Audit Objectives

This performance audit examined adoption and enforcement of building codes in Montana. The audit objectives were to:

1. Ascertain the need for adoption and enforcement of building codes in Montana.
2. Determine whether the structure used by the department and local governments provides for the most efficient and effective enforcement of building codes.
3. Gather information about municipal and county building programs and present current conditions to the Legislature.
4. Determine whether state oversight of municipal and county building programs is warranted and feasible.
5. Evaluate management controls over Building Codes Bureau operations.
6. Obtain input regarding the adoption and enforcement of building codes from various groups involved in the construction trade.

Audit Scope and Methodology

The audit was conducted in accordance with governmental auditing standards for performance audits. The audit provides information about the means by which minimum standards relating to building construction, including equipment installation and material usage, are adopted and enforced in Montana. The audit was limited to a review of the adoption and enforcement of the four primary codes: building, electrical, plumbing and mechanical. We did not examine other code enforcement areas such as: elevators, escalators, dumb-waiters, and moving walks; boiler safety; recreational vehicles; and factory-built buildings.

Chapter I

Introduction

Adoption of Building Codes

We examined the role and responsibilities of the Department of Commerce, Building Codes Bureau. Statutes provide authority to the department to adopt a statewide building code. We examined the method the department uses to adopt building codes by reviewing statutes, administrative rules, and related documentation and interviewing building officials, inspectors, and persons representing various construction trades. Cities and counties which elect to enforce building codes are mandated to adopt only those codes adopted by the department. We examined the methods used by the department to ensure city and county programs adopt and enforce the same building codes.

Department Code Enforcement Activities

We examined department activities involved with enforcing building codes. This included a review of documentation pertaining to construction-related permits which consists of applications, permits, plan review and inspection findings and correspondence. We observed department personnel process applications and issue permits. We examined activities involved with reviewing construction-related plans for compliance with the state building code. We accompanied the department's building, electrical, plumbing and mechanical inspectors on visits to construction sites throughout the state. We observed staff conduct inspections and reviewed inspection documentation. We discussed code enforcement with department personnel including management, plan review staff and inspectors. We also contacted representatives of the construction trades and persons who obtained permits and received plan review and inspection services to gather input regarding the department's code enforcement program.

Department and Local Government Interaction

We examined the relationship between the department and municipal and county building programs including extent of the department's oversight role. We examined statutes to determine authority and directives placed upon both the department and local government building code programs. We also reviewed administrative rules adopted by the department which serve as guidelines for municipal and county building code programs. We discussed responsibilities and activities with department management and staff, city and county building program officials, and other local officials. We reviewed past legislation related to the relationship between the state and local

government building code programs and monitored legislation introduced during the 1997 legislative session. In addition, we attended public hearings held during the course of the audit and gathered input from representatives of the various construction trades affected by the state and local government building code enforcement programs.

Local Government Code Enforcement Activities

We traveled to a majority of cities and counties which have elected to enforce building codes locally. We discussed program operations with local government and building code department officials. We accompanied municipal building inspectors during visits to local construction sites. We reviewed documentation maintained by these programs including applications, permits, inspection forms, correspondence, violation notices, and reports. We gathered information pertaining to the operation of municipal building enforcement programs including numbers and types of permits issued, cost of building-construction related permits, building program finances, staffing levels, and inspector qualifications.

Data Limitations

Government auditing standards require disclosure of any constraints imposed on the audit approach because of data limitations or scope constraints. During the audit, we wanted to verify local government compliance with administrative rules pertaining to the accounting of building permit fees. Local government financial information was not readily available. Thus, we were limited in assessing compliance. This issue is discussed in detail in chapter IV. In addition, workload-related data such as numbers of plan reviews conducted, inspections performed, and miles traveled, was not available from local jurisdictions.

Compliance

We examined compliance with statutes and administrative rules relating to the administration of building code enforcement programs. We found the department is complying with applicable statutes and administrative rules. Local governments are also generally in compliance. We identified two areas of non-compliance. Some local governments are not complying with a statutory provision requiring a municipal or county building code to include only codes adopted by the Department of Commerce. In addition, some local governments are not complying with

Chapter I

Introduction

administrative rules pertaining to record keeping requirements. This is discussed in detail in Chapter IV.

Areas for Future Review

During our performance audit we identified two areas we believe warrant future audit work. Both areas affect construction-related trades. The following sections discuss these areas.

Enforcing Electrical and Plumbing Licensure Requirements

Professional and Occupational Licensing Boards are responsible for enforcing licensing provisions related to various professions and occupations including electricians and plumbers. The Department of Commerce, Building Codes Bureau inspectors check for occupational licenses during inspections for compliance with the state building code. Bureau staff also ensure only properly licensed electricians and plumbers purchase permits for commercial or public projects. Potential license violations are referred to the licensing boards for investigation. Over 30 potential license violations are referred annually.

Historically, local government building code programs have not checked for electrician and plumber licenses prior to issuing electrical and plumbing permits or during inspections for compliance with the state building code. House Bill 266 (Chapter 379, Laws of 1997) mandates requesting proof of licensure effective October 1, 1997.

Building officials, inspectors and construction-related trades spokespersons have voiced concerns regarding the level of license enforcement conducted by these boards. They allege potential license violations are referred to the licensing boards and investigations are either not conducted or are untimely. A future audit could examine how licensing requirements are enforced and how potential licensing violations are pursued by investigative staff.

**Department of Labor and
Industry, Apprenticeship
and Training Program**

The Apprenticeship and Training program is responsible for the development, registration, oversight, and administration of apprenticeship programs for a number of occupations in Montana. The majority of registered apprentices are electricians and plumbers. The program also provides funding to offset some of the related training costs for sponsors of apprentice programs.

During our contact with construction-related trades, labor unions, building officials and inspectors, concerns were expressed about the effectiveness of the program. Parties have alleged it is very difficult to find employer sponsors for apprentice electricians and plumbers. In addition, concerns have been voiced over the quality of on-the-job instruction and supervision provided to apprentices. Lastly, funding for the grant portion of the program has been an issue during past legislative sessions. A future audit could examine program funding, administration, and effectiveness. This program is included on the schedule of Legislative Audit Division performance audits for the 1999 biennium.

Chapter II

Background

General Overview

Montana adopted statewide building construction standards in 1969. Prior to the adoption of statewide standards, many cities and towns had their own unique building construction standards. The standards of construction required in one city could differ from what a neighboring city required. For example, one city required all exterior building facades to be constructed of brick in order to support a local-area brick manufacturer. In an effort to provide a uniform set of construction standards, the legislature created a State Building Code Council within the Department of Administration whose primary responsibility was to adopt statewide standards and administer the program. Cities and towns could continue to enforce building construction standards but could only enforce the same standards adopted by the state. Responsibility for adopting and enforcing statewide building construction standards was maintained with the Department of Administration until July 1, 1985 when it was transferred to the Department of Commerce.

What are Statewide Building Construction Standards?

Statewide building construction standards are a collection of uniform standards and requirements for the construction, installation of equipment in, and materials to be used in buildings. They are based on what is generally accepted as good standards of construction. These uniform standards are developed by nationally recognized organizations and are intended to provide basic minimum provisions considered necessary for protection of property and for the health, safety, and welfare of the public. These uniform standards are referred to as model codes. The primary application of model codes is regulation of new or proposed construction. The building code applies to existing buildings only when the building is undergoing reconstruction, rehabilitation, or alteration.

Model codes are "consensus documents." All requirements under consideration for adoption into the model code go through a process which includes publication of draft code sections, comment period, hearings, and finally, a vote by code-group members. Members include state and local building officials, engineers and design professionals, trade associations, building construction material organizations, suppliers, and research groups.

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Groups of individual codes are commonly referred to as the "state building code." There are currently 12 nationally developed uniform and model codes which have been incorporated by reference and constitute the "state building code" in Montana. Although the National Electrical Code and the Uniform Plumbing Code are not part of the state building code as defined in section 50-60-101, MCA, they are generally included in the common use of the term. Throughout this report, the term "state building code" refers to the group of model codes adopted by the Department of Commerce. The following table depicts current codes adopted for use in Montana.

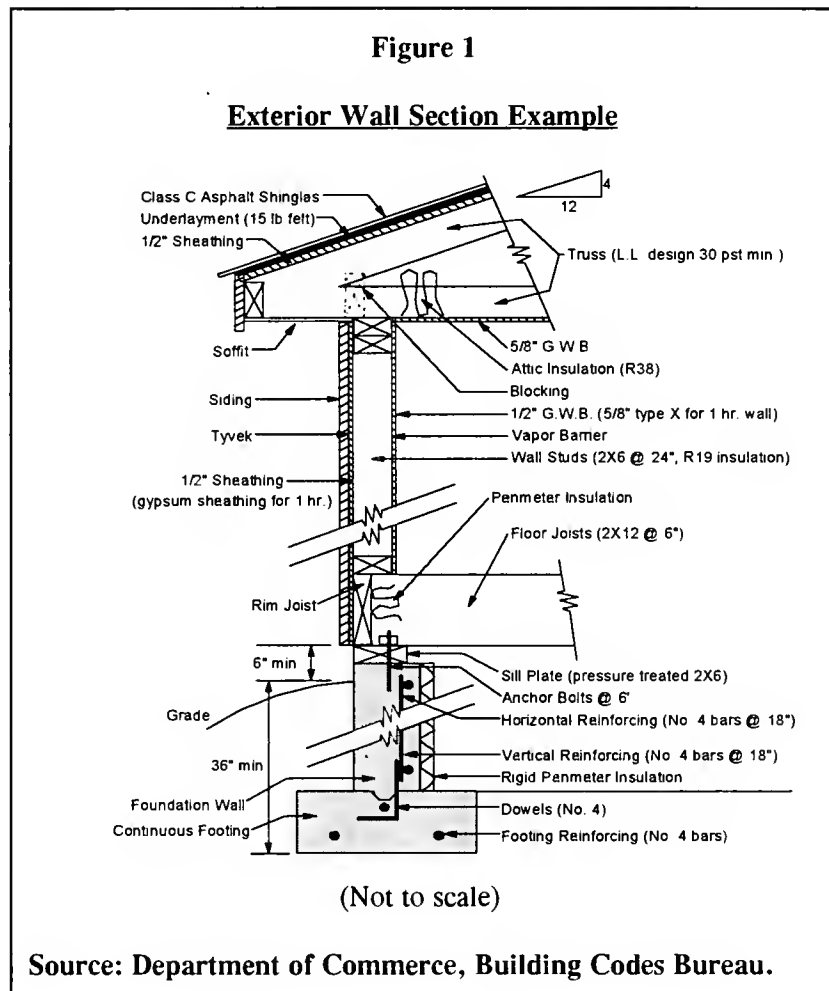
Table 1
Current Codes Adopted in Montana

Model Code	Edition	Purpose
Uniform Building Code	1994	general construction of buildings
CABO One and Two Family Dwelling Code	1995	standards for one and two family dwellings and their accessory structures
Uniform Housing Code	1994	maintenance of existing residential buildings housing tenants
Uniform Code for the Abatement of Dangerous Buildings	1994	sets standards to repair, vacate, or demolish dangerous buildings
National Electrical Code	1996	electrical installations, devices, and materials
Uniform Plumbing Code	1991	plumbing installation and equipment
Uniform Mechanical Code	1994	installation of heating systems, air conditioning, ventilation, and refrigeration
Uniform Code for Building Conservation	1994	conserve and encourage re-use of existing historic buildings
Model Code for Energy Conservation in New Building Construction	1993	energy efficient construction of buildings
Safety Code for Elevators and Escalators, ASME A17.1, 1a, 1b	1993 1994 1995	general construction, operation, and inspection of elevators, dumbwaiters, escalators, moving walks, and inclined lifts
ASME Boiler and Pressure Vessel Code and Controls and ASME Safety Devices for Automatically Fired Boilers	1995	general construction, operation, and inspections of boilers and pressure vessels
Uniform Disaster Mitigation Plan	1979	guide officials in developing plan to assess damage after disaster occurs

Source: Compiled by the Legislative Audit Division from Administrative Rules of Montana.

Chapter II Background

The codes that affect most buildings relate to basic construction of the structure; and installation of electrical, plumbing and mechanical systems. For example, as shown in Figure 1, codes specify how deep a foundation must be placed, footing and foundation requirements, grading the slope around the foundation, placement of floor joists, anchoring the floor to the foundation, construction of exterior walls, placement of roof joists and rafters, roof covering assembly, and energy requirements. Electrical codes contain requirements for the electrical service entrance, service panel, wire size and type, over-current protection devices, and electrical circuits. Codes also specify how plumbing and mechanical systems should be installed and what materials are approved for use.



How are Statewide Construction Standards Adopted?

Statutes provide the Department of Commerce is the sole agency to promulgate building regulations. This provision is designed to ensure a uniform set of construction standards exists. The department adopts the “state building code” through the administrative rule-making process. As a general rule, the department adopts national model codes. The department has statutory authority to amend model codes. The department usually updates the “state building code” to incorporate the most recent version of the model code. The department has adopted minimum building, plumbing, mechanical, electrical, energy, elevator, boiler, and handicap access standards.

How are Statewide Construction Standards Enforced?

The Department of Commerce has general responsibility for enforcing building codes in Montana. The department has jurisdiction over most construction in the state. The primary exception to this is residential and farm/ranch construction, which is discussed further in Chapter III. Local governments, either city or county, can choose to enforce codes within their jurisdiction. A local government may adopt all or part of the “state building code” and enforce those sections it has chosen to adopt. Responsibility for enforcing that part of the “state building code” not adopted by the local government remains with the department. For example, a city could adopt and enforce the Uniform Building Code yet leave enforcement of the mechanical, plumbing, and electrical codes within the city limits to the department. There is no difference between the building code administered by the department and the codes administered by local governments: the construction standards are the same.

The department and local governments use essentially the same methods to monitor compliance with the “state building code;” permits, plan reviews and inspections. Certain new buildings, alterations, additions, and repairs must be covered by state or local government building permits prior to commencement of construction. If a person is planning a building or remodeling project, they must first check to see whether or not a state or local building permit is needed. If a permit is needed, they submit an application for the permit along with construction plans. State or local building code program staff review construction plans to assess compliance with code provisions. The goal is to ensure plans comply with model

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codes. Once the design complies with model codes, construction can begin. The building is to be periodically inspected during construction by state or local building code program staff. Inspections are done to ensure the physical construction of the building project adheres to codes and to approved plans. A similar system is used to monitor compliance with electrical, plumbing, and mechanical installations. Both the department and local governments assess fees to cover the costs of monitoring compliance with model codes.

Department of Commerce Role

The Department of Commerce, Building Codes Bureau carries out the duties involved with establishing and enforcing codes. The bureau is responsible for a broad array of duties including:

- Adopting model codes.
- Disseminating code information.
- Certifying city and county building programs.
- Conducting reviews of construction design plans.
- Issuing permits.
- Conducting building, electrical, mechanical, and plumbing inspections.
- Inspecting passenger elevators.
- Inspecting boilers.
- Ensuring compliance with codes for factory-built buildings.
- Reviewing compliance with energy and physical handicap access codes.
- Conducting professional license checks.

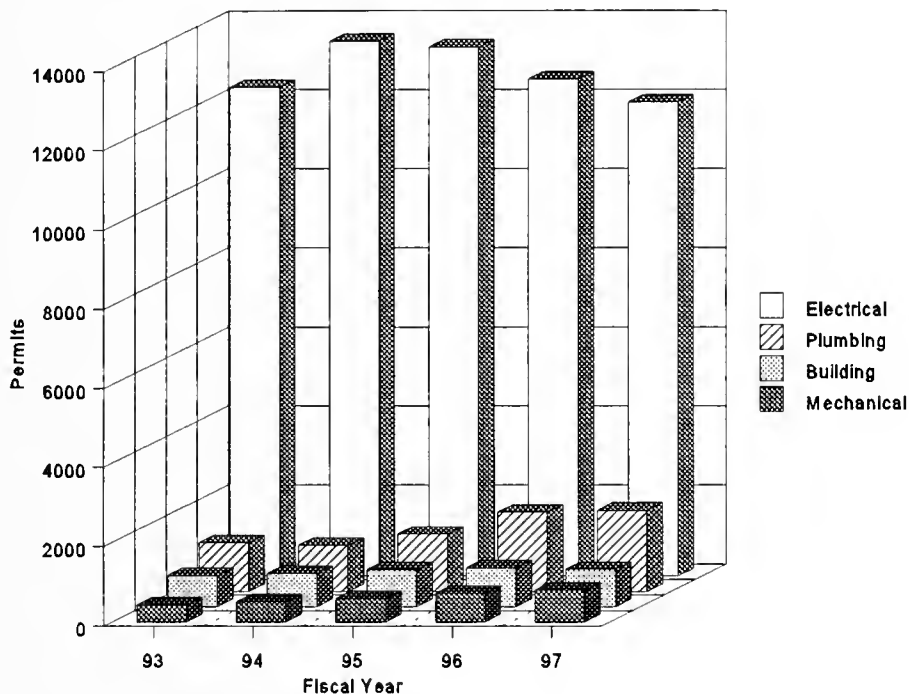
The bulk of the bureau's work centers around activities required for ensuring compliance with building, electrical, mechanical, and plumbing codes.

Central Office Activities

All construction and installation design reviews and permitting activities (within the state's jurisdictional area) are conducted centrally, out of the Helena office. The following figure presents data on the number of permits issued by the bureau over the past five fiscal years.

Figure 2

**Permits Issued by Building Codes Bureau
Fiscal Years 1992-93 through 1996-97**



Source: Compiled by the Legislative Audit Division from bureau records.

The bureau issues more electrical permits than any other permits because state electrical permits are required on almost all electrical work. (Electrical work done in cities and counties certified to issue electrical permits and conduct their own electrical inspections is exempt from state permitting and needs a local permit instead.) Fewer building, mechanical, and plumbing permits are issued because of exemptions as to when these permits are needed. In

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addition, statutes provide electrical power supply companies cannot energize an electrical installation unless an electrical permit has been issued for the work. A similar restriction does not exist for building, mechanical, or plumbing permits. The following table depicts situations statutorily exempt from state permits for those areas within the state's jurisdiction.

Table 2

State Permit Exemptions

<u>Area</u>	<u>Exemptions</u>
Electrical	<ul style="list-style-type: none"> -- Petroleum refineries (installations in some structures) -- Installation of electrical signal or communications equipment owned or operated by public utility or city
Building and Mechanical	<ul style="list-style-type: none"> -- Residential buildings containing less than five dwelling units and their attached to structures -- Private garages and private storage buildings used for owner's own use -- Farm and ranch buildings -- Mines and buildings on mining property regulated under Title 82, Chapter 4, MCA -- Petroleum refinery, pulp and paper mill buildings¹ (except office-type buildings and repair garages). -- Industrial process piping, vessels and equipment, and process-related structures¹
Plumbing	<ul style="list-style-type: none"> -- Minor repair and replacement work -- Homeowners doing own plumbing on own single family dwelling in which they intend to reside -- Mobile home dealer installing to existing water and septic as part of delivering and setting up mobile home for purchaser -- Farm and ranch buildings having own individual water and septic -- Cities, towns, water districts, and water user associations extending their own water and sewer mains -- Installation of water conditioner services in private dwelling -- Installation of a water meter by a qualified person appointed by the administrative authority of the water system -- Mines, mills, smelters, refineries -- Railroads -- Public Utilities

¹ Exempted effective July 1, 1998

Source: Compiled by the Legislative Audit Division from Montana Code Annotated.

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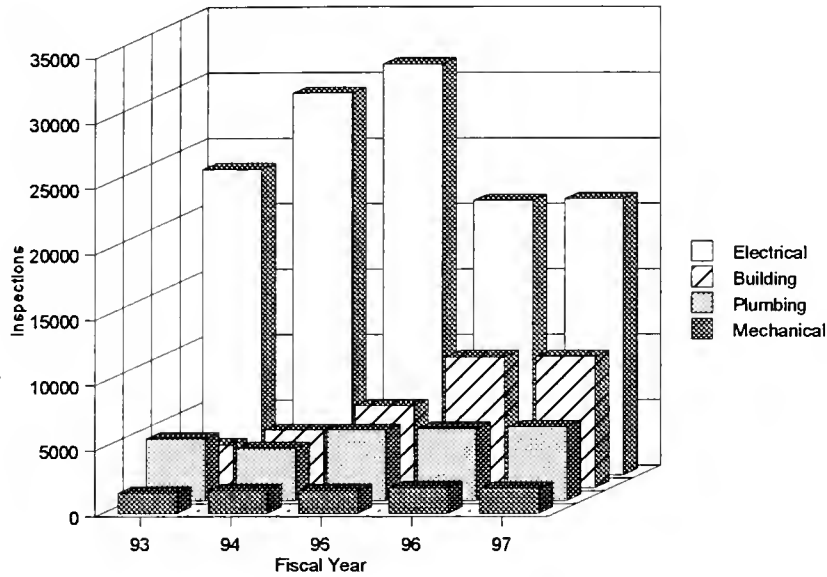
Field Activities

Once permits are issued and plans approved, the bureau conducts site inspections. In order to accomplish inspections of construction and/or installation sites, the bureau divided the state into regions and assigned inspection staff to each of the various regions. The state is divided into 6 regions for building inspections, 18 regions for electrical inspections, and 5 regions for plumbing and mechanical inspections. Inspection staff are located in and work within their assigned region. Each site is to be visited periodically during construction or installation to monitor compliance with building codes. Routine inspections of building construction; and electrical, mechanical, and plumbing installations are done when the state inspector is in the area. These visits are not scheduled. However, electrical permit holders must call to schedule rough-in and final inspections of electrical installations. This is done to ensure electrical installations are inspected before the work is covered with insulation and wallboard.

During fiscal year 1996-97, each building site was inspected an average of 10.7 times. In addition, each electrical installation averaged 1.8 inspections, each plumbing installation averaged 2.7 inspections, and each mechanical installation averaged 2.4 inspections. The number of inspections per building site is higher primarily because bureau building site inspections cover commercial and public structures only, which are generally more complex and extend over a longer time frame. The following figure illustrates the number of inspections performed by the bureau over the past five fiscal years.

Figure 3

Inspections Conducted by Building Codes Bureau
Fiscal Years 1992-93 through 1996-97



Source: Compiled by the Legislative Audit Division from bureau records.

Each of the bureau's inspectors typically travel over 30,000 miles annually conducting inspections. Once construction or installation is completed and state building code requirements met, the permit is closed.

Bureau Funding and FTE Levels

The Building Codes Bureau is funded entirely from permit fees deposited in the state special revenue fund. Fees are assessed for reviewing construction and installation plans; for conducting inspections of structures, and electrical, plumbing and mechanical installations; and for safety inspections of boilers and elevators. The following table illustrates bureau expenditures, allocations, and FTE levels.

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Table 3

Building Codes Bureau FTE and Expenditures
Fiscal Years 1994-95 through 1998-99

<u>Category</u>	<u>Actual</u>			<u>Budgeted</u>	
	<u>FY 1995</u>	<u>FY 1996</u>	<u>FY 1997</u>	<u>FY 1998</u>	<u>FY 1999</u>
Authorized FTE	35.00	45.00	45.00	48.76	59.00
Personal Services	\$1,168,554	\$1,412,252	\$1,499,752	\$1,684,818	\$1,953,457
Operating Expenses	359,066	494,196	509,669	600,750	672,898
Equipment and Intangible	310,509	1,525	0	293,611	167,500
Benefits and Claims	1,380	0	2,500	0	
Total	<u>\$1,839,509</u>	<u>\$1,907,973</u>	<u>\$2,011,921</u>	<u>\$2,579,179</u>	<u>\$2,793,855</u>

Source: Compiled by the Legislative Audit Division from SBAS records.

Between fiscal years 1994-95 and 1995-96, an additional 10.00 FTE were authorized due to increased construction activity and related bureau workload. The bureau also assumed responsibility for the Boiler Safety and Inspection Program which was transferred from the Department of Labor and Industry. For the 1999 biennium, the bureau is authorized an additional 14.00 FTE. This will bring total FTE to 59.00 in fiscal year 1998-99. Current biennium increases are due to: 1) Senate Bill 286 (Chapter 331, Laws of 1997) which requires the bureau to inspect exterior building accessibility for persons with disabilities; 2) House Bill 388 (Chapter 488, Laws of 1997, effective July 1, 1998) which is expected to cause the de-certification of some city and county building code programs and partial de-certification of local building code programs which have extended jurisdiction and shift inspection responsibilities onto the state; and, 3) general workload increases resulting from the current construction market and from the boiler inspection program.

City and County Building Programs

Statutes allow for city and county adoption of the “state building code” and provide local governments the authority to enforce codes within their jurisdiction. Most city and county programs have been in operation for some time. In fact, some programs pre-date the state program. City and county officials indicate they elected to administer and enforce building regulations locally for a variety of reasons:

- Provides local control.
- Can better regulate zoning and planning and control local development.
- Ensure single and multi-family dwellings comply with building codes since the state does not monitor these structures.
- Enforce codes for safety reasons and protection of property.
- Remain aware of what construction is going on in community.
- Identify property for property tax purposes.
- Generate revenue.

A local government which intends to enforce the state building code must first request to be certified by the department to administer and enforce the state building code or portions of the code. Certification consists of submitting: 1) the code adopted, and 2) a plan for enforcement to the department. The majority of municipal and county building programs were certified around 1979 when the Department of Administration was responsible for administering the program.

Currently, there are 54 certified local governments enforcing building codes: 51 cities, one county, and two consolidated governments. These programs operate independently of the department's building code program and the areas of jurisdiction are clearly delineated between the local governments and the department. In order to help ensure all governmental entities are enforcing the same “state building code,” city and county building programs are statutorily required to adopt only codes which have been adopted by the department. For example, if a city wants to regulate building construction, they must enforce the building code adopted by the department; currently, the Uniform Building Code, the Conference of American Building Officials (CABO) One and Two Family Dwelling Code, and companion codes. A city or county can not

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adopt a model code which has not been adopted by the Department of Commerce, such as the Southern Standard Building Code. Once a city or county elects to administer and enforce building regulations, there are a variety of options the law grants them and these options involve primarily three issues: 1) what portion of the state building code to enforce; 2) which structures will be exempted; and 3) need to extend jurisdiction.

Issue #1: What portion of the “state building code” to enforce?

Local governments may adopt all or part of the “state building code” and enforce those sections it has chosen to adopt. For example, the city of Chester has chosen to enforce only the Uniform Plumbing Code and has left responsibility for enforcing codes related to building construction, and electrical and mechanical installations to the Department of Commerce. In contrast, the City of Missoula has adopted the entire “state building code” and enforces these codes within their jurisdiction. The following table illustrates which local governments have established code enforcement programs, codes enforced, and number of permits issued during fiscal year 1995-96.

Table 4

Certified Local Government Building Code Programs
Fiscal Year 1995-96

City/County	Building Permits	Electrical Permits	Plumbing Permits	Mechanical Permits
Anaconda/Deer Lodge County	135	S	S	S
Belgrade	127	S	0	S
Belt	11	S	S	S
Big Sandy	7	S	S	S
Billings	1680	1412	1107	879
Bozeman	757	507	535	P
Broadus	9	S	S	S
Butte-Silver Bow County	323	284	109	17
Chester	S	S	6	S
Chinook	20	S	S	S
Choteau	6	S	S	S
Columbia Falls	114	127	88	96
Conrad	101	S	S	S
Cut Bank	44	S	S	S
Darby	19	S	S	S
Deer Lodge	112	S	S	S
East Helena	37	24	16	12
Forsyth	27	S	S	S
Fort Benton	59	S	S	S
Glasgow	35	34	10	P
Glendive	24	S	S	S
Great Falls	279	923	1799	9
Hamilton	94	S	119	S
Hardin	107	S	S	S
Harlem	8	S	S	S
Havre	48	S	38	97
Helena	374	368	191	169
Hot Springs	3	S	S	S
Hysham	17	S	S	S
Kalispell	478	S	295	495
Laurel	127	S	29	S
Lewistown	64	S	S	S
Libby	36	S	S	S
Livingston	25	S	19	P
Malta	13	S	S	S
Miles City	89	S	S	S
Missoula	702	771	542	632
Pinesdale	4	4	4	0
Plains	37	S	S	S
Polson	97	S	S	39
Red Lodge	183	S	S	S
Richland County (except Fairview)	5	S	S	S
Ronan	46	S	S	S
Roundup	23	S	S	S
St. Ignatius	14	0	0	0
Shelby	34	S	S	S
Sidney	18	S	S	S
Stevensville	58	38	14	34
Three Forks	58	S	S	S
Townsend	49	S	S	S
Troy	9	S	S	0
West Yellowstone	34	S	S	11
Whitefish	191	S	97	160
Wolf Point	6	S	S	S
Total	6977	4492	5018	2650

Legend: S=State Jurisdiction; P=Included with Plumbing Permits

Source: Compiled by the Legislative Audit Division from Department of Commerce and Local Government Building Code Program records.

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Issue #2: Which structures are exempt from local government oversight?

Statutes allow local governments the option of applying the “state building code” to buildings which are exempt from the department’s jurisdiction: residential buildings containing less than five dwelling units or their attached to structures; any farm or ranch building; and, any private garage or private storage structures used for the owner’s own use. Local governments can opt to make the “state building code” applicable to these structures by adopting an ordinance or resolution. Most local governments have made the “state building code” applicable to all residential buildings, garages, and some storage structures, and therefore these construction activities need to be permitted and inspected within the local jurisdiction.

Issue #3: Should the municipality’s area of jurisdiction be extended?

A municipality may also enforce the “state building code” beyond its city limits. Statutes allow municipalities to expand this area of jurisdiction up to 4 ½ miles beyond the limits of an incorporated municipality. The majority of municipalities enforce codes only within their incorporated city limits. Nine cities have extended their jurisdiction anywhere from 1 to 4 ½ miles. The primary reason cities opted to extend their area of jurisdiction was to regulate construction in areas which may later be annexed into the city. The following table illustrates which cities have extended jurisdiction for enforcing the state building code, amount of extended jurisdiction, and compares the number of building permits issued in the city limits to those issued in the extended area.

Table 5

Municipal Building Programs with Extended Jurisdiction
Fiscal Year 1995-96

		Residential Building Permits		Commercial Building Permits	
City	Extended Area	In City Limits	Extended Area	In City Limits	Extended Area
Billings	4 ½ miles	81.6% (987)	18.4% (223)	88.1% (414)	11.9% (56)
Bozeman	4 ½ miles	82.6% (431)	17.4% (91)	95.3% (224)	4.7% (11)
Columbia Falls	1 mile	66.7% (64)	33.3% (32)	44.4% (8)	55.6% (10)
Deer Lodge	1 mile	87.9% (80)	12.1% (11)	80.9% (17)	19.1% (4)
Fort Benton	1 mile	100.0% (41)	0.0% (0)	94.4% (17)	5.6% (1)
Kalispell	varies up to 3 ½ miles	60.2% (191)	39.8% (126)	56.5% (91)	43.5% (70)
Miles City	1 mile	91.5% (54)	8.5% (5)	80.0% (24)	20.0% (6)
Missoula	4 ½ miles	56.1% (303)	43.9% (237)	62.3% (101)	37.7% (61)
Whitefish	1 mile	89.5% (120)	10.5% (14)	77.2% (44)	22.8% (13)

Source: Compiled by the Legislative Audit Division from Department of Commerce and Municipal Building Code Program Records.

Daily Operations of City and County Building Code Programs

City and county building code programs are operated in much the same manner as the state's. Design plans are reviewed for code compliance prior to construction, work permits are issued, and inspections performed by local government inspectors. There are a few key differences between the daily operations of city and county building programs and state's program.

- City and county building code programs are often also responsible for overseeing local zoning related regulations. Zoning requirements differ from model code requirements. Zoning generally relates to property uses and includes things such as how far a building must be set-back from the property line, areas where commercial businesses may be located, types

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of fences allowed between two properties, and construction in floodplain areas.

- The majority of inspections done by local inspectors are scheduled. Because local inspectors have a much smaller area of travel, cities and counties are able to require permittees to contact the local building program and schedule inspections at key points of construction. Random unscheduled visits are also conducted.

In addition to numbers of permits issued, other workload indicators are numbers of plan reviews conducted, inspections performed, and miles traveled. This base-line data was not available from the majority of local jurisdictions.

Chapter III

Montana's Code Enforcement Program

Introduction

This chapter discusses the need for the adoption of minimum building standards and a program to monitor compliance with these standards. Information is also provided which examines the structure in which the state and local governments enforce state building codes and whether the current structure provides for efficient and effective enforcement of the state building code.

Are Statewide Building Construction Standards Needed?

One of the first objectives of this audit was to determine whether or not there is a need for adopting and enforcing building codes in Montana. There are various factors which influence the need for codes and an enforcement program; while considering issues such as the need to protect the public and integrity of structures. The following section discusses reasons which support a program of construction standards and enforcement.

Model Codes are Minimum Standards

Montana is one of forty states which have elected to mandate a state code to cover building construction and installation of related equipment. According to various construction industry groups, insurance industry representatives, fire officials, and model code groups, Montana's program which sets minimum standards and monitors compliance with those standards, provides a number of benefits:

- ▶ Ensure the integrity of the structure and adjacent structures.
- ▶ Save lives and property.
- ▶ Mitigate natural hazards.
- ▶ Ensure installed products are safe.
- ▶ Confirm qualified installers are on the job.
- ▶ Independent review of contractors work.
- ▶ Consumer comfort knowing independent review was done.
- ▶ Lower insurance premiums.
- ▶ Alleviate pressure on local fire services.
- ▶ Increase property value.

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Codes Protect Consumers and the Public

The need for minimum codes and administering and enforcing codes is directly related to providing structural integrity, protecting building occupants and neighboring structures, and safeguarding the public in general. For example, foundations and footings support the weight of a structure. Codes set the requirements for constructing footings and foundations. Improperly designed footing and foundation systems have led to the collapse of buildings. Model codes also set standards for weight-bearing capacity of a roof. Improperly constructed roof structures have collapsed under the weight of heavy snows. Among other requirements, the National Electrical Code sets the standards for grounding a residential electrical system. Improper grounding has caused electrocutions and fires. Besides protecting the structure under construction, complying with fire-related codes also protects neighboring structures. The Uniform Plumbing Code requires the use of back-flow prevention devices to prevent contamination of potable water supply in a home. For example, if a hot water heating system has a faulty valve and no back-flow preventer installed, a back-flow of boiler water could contaminate a fresh water system. Improper plumbing installations have also contaminated community water systems affecting many different homes.

Broad Base of Support for Codes

Many groups strongly advocate or support the need for and use of codes. State groups voicing support of adoption of minimum codes and a program of inspections include: the Montana Chapter of American Institute of Architects, Montana Technical Council, Montana Building Industry Association, Montana Contractors Association, Montana Electrical Contractors Association, International Brotherhood of Electrical Workers, Master Plumbers Association, and the Montana State Fire Chiefs Association.

There is also strong national-level support of minimum codes including monitoring programs. A group called the Inspection Initiative, which is an industry coalition supporting qualified electrical inspections, recently adopted a position paper stating their support of inspections. Group members include: Underwriters Laboratories Inc., International Association of Electrical Inspectors, National Fire Protection Association, National Electrical Contractors Association, National Electrical Manufacturers Association, Edison

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Electric Institute, and the International Brotherhood of Electrical Workers. The Insurance Institute for Property Loss Reduction which works on behalf of the insurance industry, states that sound building codes, which are effectively enforced, are a critical element in reducing deaths, injuries, and property damage caused by natural hazards.

A good system of building regulation requires: 1) establishing a uniform statewide code; 2) reviewing design plans for compliance with codes; and, 3) conducting on-site inspections of construction to ensure compliance with codes. Without these three parts, there is no assurance the public health and safety is protected.

Conclusion: We determined there is strong justification for establishing minimum levels of building standards and a system of reviewing adherence to minimum standards. The adoption and enforcement of uniform codes provides a benefit to the citizens of the state.

Montana's Code Enforcement Structure

One of the primary purposes of this audit was to examine the structure in which the state and local governments enforce building codes to determine whether the code enforcement function is performed in the most efficient and effective manner. We examined operations of department and local government code enforcement programs and their working relationship with each other. This section addresses our findings related to this working relationship.

Decentralized System of Enforcement

The process of having standards which govern building construction in Montana has evolved over time. It has changed from a system of no standards; to one in which many cities each established their own unique standards; and ultimately, resulted in the adoption of a uniform, statewide building code in 1969.

Montana has a very decentralized system of enforcing the state building code. Administration and enforcement of the state building code is done by the Department of Commerce and local governments. Fifty-four local governments have some scope of enforcement programs. Their programs range from enforcing only plumbing-related codes to enforcing the entire state building code.

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The Department of Commerce generally is responsible for everything not inspected by local governments.

Advantages to Local-Level Enforcement

There are advantages to local-level enforcement. Local-level enforcement of building codes can provide for efficient service in areas of concentrated population. City inspection staff have the advantage of smaller areas of jurisdiction to physically inspect. This allows the local inspector to conduct inspections more often and schedule inspections at the key stages of construction. However, city building code programs can only focus on construction occurring within or immediately surrounding the city limits. This leaves a substantial part of construction activities in the state not covered by a local program.

Statutes allow counties to elect to enforce building codes. There are currently two city-county combined code enforcement programs and one county enforcement program in the state. Butte-Silver Bow enforces all four major code groups: building, electrical, mechanical, and plumbing. Anaconda-Deer Lodge and Richland County have elected to enforce only building-related codes.

Essentially, the same local governments have operated code enforcement programs for the past twenty years. It appears unlikely additional local governments will elect to establish local code enforcement programs. It is a local government decision to enforce codes. They can opt not to enforce codes locally. Thus, there is a need for the department to provide enforcement services in all areas outside of the 54 local government code enforcement programs.

Advantages to State-Level Enforcement

The state-covered area includes the majority of the geographical area in 53 counties. The department has established a regional approach in order to provide more effective and efficient services. Inspectors are assigned to regions and provide inspection services within the region. This regional approach allows the department to provide inspections with somewhat smaller travel distances. In addition, state inspectors in the regions conduct inspections in several adjoining counties which allow for economies of scale compared to single county systems. This is important in a largely rural state with long distances between construction sites.

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Current Enforcement System Makes Sense

Given the large amount of work and the large physical area to be inspected, it is unrealistic for the Department of Commerce or local governments to administer the state building code program alone. A system which relied entirely on local-level enforcement would not be very efficient especially in the more rural counties which have a low number of inspection sites. On the other hand, placing all regulatory authority with the state would have its drawbacks. Local governments would have no oversight of construction occurring in their communities. In addition, local programs can be more efficient in areas with concentrated construction. The current system of combined state and local-level regulation makes sense. It can provide an effective and efficient means of enforcing the state building code.

Conclusion: Montana's current system of state and local government building code enforcement programs is a reasonable approach. However, there are improvements which could be made to provide for a more effective program as discussed in Chapter IV.

Law Creates Gaps in Coverage

As mentioned earlier, the first requirement of a good system of building regulation requires establishing a uniform statewide code. A state building code has been adopted in Montana. However, statutes are inconsistent regarding what buildings and equipment installations must meet minimum standards and also what situations require a permit and inspection to monitor compliance with codes.

Historically, different state agencies and groups have been responsible for administering and enforcing building, electrical, and plumbing regulations. Over the years, the State Electrical Board; Board of Plumbers; Board of Warm Air Heating, Ventilation, and Air Conditioning; Department of Justice; Department of Administration; and, Department of Commerce have been responsible for administering and enforcing code-related requirements. While the evolution of building code regulatory activities has brought these activities under one organizational umbrella, we noted substantial differences and inconsistencies in statutory requirements regarding when construction must meet minimum standards and which activities need a permit and subsequent inspection.

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Montana's Code Enforcement Program

Some Buildings not Required to Meet Minimum Standards

In Montana, the legislature has exempted entire classes of buildings from meeting minimum building and mechanical code requirements. Statutes specifically exempt:

- Residential buildings containing less than five dwelling units or their attached to structures.
- Any farm or ranch building.
- Any private garage or private storage structure used only for the owner's own use.
- Mines and buildings on mine property.
- Some petroleum refinery, pulp, and paper mill buildings.

In addition, plumbing installations in mines, mills, smelters, refineries, public utilities, railroads, or on farms having their own individual water or sewage disposal system are exempt from complying with plumbing codes. Electrical installations in petroleum refineries and installations of electrical signal or communications equipment owned or operated by a public utility or a city are exempt from meeting electrical codes. As a result of the statutory exemptions, these buildings and equipment installations do not have to be constructed or installed according to code.

Some Buildings and Installations Exempt from Inspections

Because the buildings and electrical and plumbing installations listed in the prior two paragraphs are exempt from meeting codes, they are exempt from department permitting and inspection activities. Statutes also exempt additional situations from permitting and inspections. Some exemptions are for minor replacement or repair work. Statutory exemptions from permitting and inspection requirements are also granted for the following plumbing-related installations:

- The owner of a single family residence, used exclusively for his personal use making the installation himself.
- Cities, towns, water districts, and water user associations extending their own water and sewer mains.
- Installation of water conditioner services in private dwellings.
- Installation of a water meter by a qualified person appointed by the administrative authority of the water system.

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Discrepancies in Coverage Exist

The statutory exemptions from complying with codes and for obtaining permits and inspections have created some discrepancies. For instance, a homeowner can perform plumbing work without a permit and inspection but if the homeowner hires a licensed plumber, the plumber must obtain a permit and have his work inspected. A public water supply is defined as a water supply serving 10 or more families or 25 or more persons. A homeowner can conduct his own plumbing work on such a system without a permit or inspection even though improper installation could impact the other families on the same water supply. Another discrepancy is that although multi-unit residential structures are typically rental units for business purposes, these units do not require permits and inspections even though other commercial structures do. In addition, if a homeowner is building his own home in an area the department has jurisdiction over and voluntarily requests a permit and inspections, the department does not have authority to provide the service.

Improper Construction and Installation is Hazardous

Improperly constructed buildings can result in hazardous situations, or substantially reduce the life of buildings. Some hazards which result from improper construction include: unstable or poorly installed foundations can result in unsafe structures; structures which do not meet minimum weight-bearing requirements or seismic-related standards can collapse; and buildings not built to codes may not withstand the force of winds. During the winter of 1996-97, at least 37 buildings collapsed in the Lincoln county area resulting in estimated damages of \$3 to \$4 million. According to insurance representatives and building officials, many of these structures collapsed because they did not meet minimum roof weight-bearing standards. During the same year, a riding arena collapsed under the weight of snow due to a design which did not comply with codes. Building officials indicated the footings and foundation which support the building were not reinforced and the entire building subsequently collapsed.

Improper electrical installations and use of unapproved materials cause injury, deaths, and property loss. According to the National Fire Protection Association, the largest percentage of fire-related injuries and deaths occur in residences. Improper installation,

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unapproved equipment, and improper use of heating systems is one of the primary causes of residential fires. Improper plumbing installations also create hazards within a structure and can contaminate water supplies. For example, improper installation of boiler-type heating systems has cross-contaminated drinking water supplies with antifreeze; improper venting of plumbing systems has resulted in hazardous gases entering a structure; improper installation of safety-related plumbing equipment has allowed contaminated water to be siphoned into drinking water supplies.

Need to Address the Gaps in Coverage

Statutes currently allow municipalities and counties to address the gaps in coverage by allowing the local legislative body to make the state building code applicable to statutorily exempted structures by adopting an ordinance or resolution for their area of jurisdiction. Thus, a city certified to enforce the state building code could elect to cover all structures within their jurisdictional area. In reviewing local government programs we found most cities inspect all structures. However, the department is specifically excluded from enforcing provisions of the state building code for certain structures and situations.

Various groups indicate for building codes to fully protect the public health and safety and give consumers reasonable assurances buildings; and electrical, mechanical, and plumbing installations meet minimum standards, the state building code should be applied uniformly to building construction and activities in the state. There are many state and national groups which support more uniform coverage.

- Insurance industry groups such as The Insurance Institute for Property Loss Reduction and the Insurance Services Office state model codes should be uniformly applied to all structures. Insurance consumers in states lacking such coverage pay higher costs for insurance coverage. Statistics put together by the insurance industry estimate approximately 350,000 of Montana's residents live in areas not covered by a residential code inspection program.
- The Montana State Fire Chiefs Association adopted a resolution to support the adoption and enforcement of a model

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building code for all residential and commercial buildings in Montana.

- The Montana Building Industry Association also supports elimination of the exemption for residential structures.

Task Force Should Review Current Exemptions

Statutes establishing the state building code and the code enforcement program have been in existence for almost 30 years. Since the programs inception, several different agencies have been involved with oversight and many groups have sought exceptions from coverage. Other groups have sought to eliminate exemptions. As a result, bills have been introduced almost every legislative session which have amended the program's statutory provisions. Over the years the coverage of the program has become convoluted.

Because of the many changes made over the years and the many parties with an interest in the state building code and the building code program, it is difficult for the legislature to visualize overall building code coverage in the state. The changes that have been made to the system have been accomplished in a piecemeal manner without any comprehensive evaluation. Because the department is generally responsible for administering the state building code, the department should take a lead role in conducting this comprehensive evaluation. The department could accomplish this by forming a task force of local governments, building contractors, construction-related trade groups, insurance industry representatives, fire officials and others to review statutes and administrative rules and determine whether changes need to be made related to the current exemptions.

Recommendation #1

We recommend the Department of Commerce work with various local governments, building contractors, construction trade groups, insurance industry representatives, and fire officials to determine whether changes need to be made to laws or rules covering current exemptions to the state building, electrical, mechanical, and plumbing codes.

Chapter IV

Improving Local Code Enforcement Programs

Introduction

The 1997 Legislature directed the Department of Commerce to assume a stronger oversight role over city and county building code programs. House Bill 388 directs the Department of Commerce to take an active role with city and county building code enforcement programs and mandates a method of oversight. Effective July 1, 1998, the department will be required to continually oversee local government building code enforcement programs. The department must certify code enforcement programs are in compliance with applicable statutes and certification rules. Local government programs will be required to submit annual reports to the department which demonstrate compliance with various provisions of the act. The act also provides for prompt decertification of municipal programs that refuse or fail to comply with applicable statutes or rules. It also provides additional enforcement options for the department in lieu of decertification.

Given this re-affirmed oversight role and based on audit work conducted, we believe the department can improve services being provided by municipal and county building code programs. In order to achieve this, the department needs to implement the following steps: 1) ensure city and county programs adopt the correct codes; 2) organize training for local building officials, plan reviewers, and inspectors; 3) work towards achieving more uniform interpretation of codes; 4) examine municipal and county building code program finances; and, 5) conduct thorough re-certification of municipal and county building code programs. This chapter addresses our findings related to municipal and county building code programs.

Some of the recommendations can be implemented using current department resources. Other recommendations will require resources to implement. However, the 1997 Legislature provided additional funding and staff to the department for its expanded oversight role. The recommendation regarding achieving more uniform code interpretation may require additional resources beyond what has been provided.

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Improving Local Code Enforcement Programs

Adoption of Uniform Codes

The Department of Commerce is responsible for the adoption of the state building codes. Local governments which have chosen to enforce the state building code are allowed to do so. In order to provide for a uniform statewide building code, section 50-60-301, MCA, states, "A municipal or county building code may include only codes adopted by the department."

Local Government Adopting Incorrect Codes

Some cities have not adopted the same codes as the department. For example, the department had officially adopted the 1994 edition of the Uniform Building Code. We found cities using both older and more recent versions of the Uniform Building Code. The same is true of the other codes such as Uniform Plumbing Code, CABO One and Two Family Dwelling Code, and National Electrical Code. In addition, our review of Department of Commerce files revealed many municipal or county building code programs have not filed ordinances with the department indicating adoption of current codes as required by statute.

Construction codes are dynamic and are updated to reflect changing technology and practices. Requirements in one edition of a code may change in a subsequent edition. Thus, it is important for all enforcing entities to adopt the same versions and editions of codes. It provides for a "level playing field" for contractors and tradesmen and also protects the public by setting minimum safety standards. The following examples illustrate some variations between code editions:

- The 1991 Edition of the Uniform Building Code requires that congregate residences such as a boy's youth home or assisted care facility, housing more than 50 people have a fire sprinkler system. The 1994 edition strengthened this requirement and requires a fire sprinkler system if more than 20 people will be housed.
- A convenience store was classified as a "Group B Occupancy" in the 1991 edition of the Uniform Building Code. That changed to a "Group M Occupancy" in the 1994 edition. Thus, the construction requirements have changed for a convenience store. These requirements cover a multitude of things such as building height, roof framing, lighting, and ventilation.

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- The dimensions for residential egress windows also changed. The 1989 edition of CABO specified a minimum height of 24 inches. The current minimum height as specified by the 1995 edition of CABO is 22 inches.

Model codes are updated for a number of reasons. Some updates incorporate new technology, other changes are designed to promote increased safety of building occupants or to further protect the structural integrity of the building. In addition, some code changes reduce the cost of construction. When building officials enforce different editions of codes they can affect many things including project costs and contractors' bids. Contractors indicated even a code change as minor as the window dimension change of 2 inches can be costly when one considers how many windows a contractor installs in just one home. The code change requiring a fire sprinkler system in a congregate residence has even greater cost implications.

During our discussions with city building officials, we found officials were not always aware of which edition of a particular code the state was enforcing. The department does notify cities and counties of current codes adopted by the state. However, some local building officials are confused about the statutory requirement that local governments must adopt and use the same codes as the state. In addition, some local officials do not understand they must adopt the code by ordinance. Thus, local building officials do not always respond to the notification. Throughout the year, the department issues updates and modifications to the state building code which lends to the confusion over which edition they should be enforcing. Another contributing factor is notices from the department may not always go to the proper local government officials. Many of the local building officials conduct inspections on a part time basis and have little knowledge or input into local government administrative matters. Thus, notices local building officials receive from the department to adopt a particular version of a model code may go unheeded by the local governments.

The department has not been enforcing the statutory requirement that city and county building code programs file adopted codes with the bureau. The department has a statutory obligation to ensure local governments have adopted the most recent editions of and

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amendments to the state building codes. The department should also re-examine its mailing list to ensure code adoption notices are sent to the proper local officials. In addition, it would be beneficial for the department to provide an explanation to local government officials of the statutory and administrative rule requirements pertaining to the local adoption of state building codes.

Recommendation #2

We recommend the department:

- A. Ensure city and county building code programs adopt the current state building code by requiring local governments to provide copies of adopted ordinances.**
- B. Provide an explanation of statutory and administrative rule requirements pertaining to adoption of state building codes to city and county building officials.**

Increasing Knowledge of Codes Through Training

Once a local government elects to enforce the various building codes, staff need to become proficient in understanding the basic principles of the codes and methods for conducting inspections to verify code compliance. Model codes are quite complex and lengthy. Some sections are technically demanding. Having qualified staff and providing training are key elements for a successful building inspection program. Qualified and well-trained staff also help ensure consistency in the application of model codes.

Contractors and individuals are purchasing permits and anticipating receiving a service in exchange. They look to city and county inspectors as the code "experts" and expect them to be proficient and able to check work to ensure compliance with code provisions.

During our visits with city and county building code departments, we obtained information regarding staff qualifications and training. We found the overall trend is for the largest cities to offer training opportunities to staff and require or encourage professional licensure or certification of staff while most smaller cities do not.

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What are the Qualifications of City and County Staff?

There are several professional licenses available in the field of construction. This includes engineering, architecture, and the electrical and plumbing trades. In addition to licensure, a multitude of certifications are available related to model code enforcement. For example, certification is available in conducting inspections of residential buildings for compliance with CABO standards, or for conducting plumbing inspections for compliance with the Uniform Plumbing Code. Certification serves as a measure of an individual's knowledge of codes and standards.

We gathered license and certification information from 34 cities and counties as one means of gauging the qualifications of local government staff conducting reviews of construction plans and performing building inspections. Overall, we found 29 percent of local government building code programs sampled have either a licensed or certified staff member while 71 percent do not. The following table illustrates qualification data for the sample of cities visited broken down by type of code enforced.

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Table 6

Qualifications of a Sample of Local Government Building Code Program Staff

		Have licensed or certified staff		No licensed or certified staff	
Code Type	Number of Entities Enforcing	Entities	Percent of Permits Issued	Entities	Percent of Permits Issued
Building	34	9	63.0	25	37.0
Electrical	6	4	96.7	2	3.3
Plumbing	11	5	90.5	6	9.5

Source: Compiled by the Legislative Audit Division.

As the previous table illustrates, 74 percent (25/34) of cities and counties in our sample do not have licensed or certified staff members inspecting building construction for compliance with codes. Those 25 cities and counties issued 37 percent of the building permits in our sample. Local governments are more likely to have licensed or certified staff inspecting electrical and plumbing installations than inspecting building construction. Cities and counties commonly require electrical and plumbing inspectors to be either licensed or certified as a condition of employment. Under statutory provisions effective July 1, 1998, persons performing plumbing and electrical inspections must be licensed or certified. Thus, any local government enforcing electrical or plumbing codes will either have to have qualified staff or relinquish these inspection duties to the Department of Commerce. However, no such statutory requirement exists for persons performing building inspections in Montana. The department may develop minimum certification or qualification standards for local building inspectors through the department's rule-making authority granted in section 50-60-302(2), MCA.

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What Training is Provided to City and County Staff?

The majority of local governments do not provide educational and training opportunities. Sixty-seven percent (24/36) of local governments in our sample had not offered educational or training opportunities to inspection staff. Although local officials are very supportive of training and educational efforts, they are unaware of what training is available for code enforcement officials and inspectors. Lack of time to attend training seminars and related costs can also hinder the ability to train inspection staff. In speaking with inspectors, they were frank regarding their abilities and expressed concern and frustration with the lack of training provided. One city building official stated he would not charge citizens for a service he was not qualified or able to provide and therefore, he no longer enforces the requirement of obtaining a building permit. Another city official indicated the duty of performing building inspections was "dropped into his lap" in addition to other municipal duties and he has received no training in understanding and enforcing model codes.

There is a Need for Training

Our audit work with local code enforcement programs showed there is a need for increasing the level of knowledge of local inspectors and support for providing educational opportunities. Eighty-six percent (31/36) of cities sampled indicated a strong desire for training and will support any statewide training efforts. In addition, during the 1997 legislative session, there were considerable discussions and concerns expressed regarding the qualifications of local government inspectors. Building industry officials, contractors, legislators, and citizens voiced concerns with qualifications of inspectors.

Compounding the qualification and training issues is the fact the majority of local building inspectors work in a very isolated manner. The local building department is most often a "one man show" and these inspectors do not commonly contact or work with inspectors from neighboring communities. Audit work revealed seventy-nine percent of local programs in our sample do not have "dedicated" full-time staff conducting inspections. Cities employ either part-time staff or combine inspection duties with other local government duties. Because of the isolated manner in which many inspectors

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work, they have limited opportunities to learn more about codes and enforcement.

No Organized Training Effort Exists

One factor limiting training and education of city and county inspectors is the lack of any organized training effort for building inspectors in the state. No entity has taken responsibility for organizing training efforts and providing information. Although there is a state chapter of the International Conference of Building Officials (ICBO), they have done little in terms of organizing training for building inspectors in Montana. The same is true of the Department of Commerce. The department has never taken the role of organizing training and facilitating the education of local government inspectors.

Department of Commerce has Umbrella Authority

The Department of Commerce has overall responsibility for administering a code enforcement program in Montana. Under the department's umbrella authority, it has a responsibility to advise, consult, and cooperate with local governments. The department is the logical party to coordinate a statewide training program. Many other states have developed successful training programs for building inspectors. The states of Oregon and California have such programs and have organized training in many subjects such as the techniques of inspection, code interpretation, reviewing design plans, structural and non-structural elements of construction, and review of various codes and code updates.

There are resources the department could use to facilitate its educational efforts. The department could use existing training programs such as national code organization training workshops. In-house and local government building code program staff could also be used to provide training. There are building officials, plan review staff, and inspectors in the state who have many years of experience in the field and may be qualified to instruct others. Cities were also interested in the possibility of the department establishing a lending library of videos and written materials for use by cities. Cities which have some of this material indicated their willingness to participate by sharing materials with others.

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Recommendation #3

We recommend the department:

- A. Organize an effort to increase training and educational opportunities provided to city and county building officials, plan review staff, and inspectors.**
- B. Establish a video and publication lending library.**
- C. Use existing training programs available from various groups to supplement educational efforts.**

Refine Code Interpretation Process

The two previous recommendations dealt with taking steps to ensure local governments adopt the correct codes and providing training for city and county code enforcement staff. Once everyone uses the correct codes and understands the basic principles of the codes, the next step is to refine working with the codes to achieve more consistent interpretation and application of code requirements. During the audit we discussed consistency of interpretation and practical code application with state and local government building officials and inspectors, general contractors, trades persons, and spokespersons for the statewide organizations which represent these groups. We found model codes could be more consistently interpreted and applied. The following section discusses this issue.

Codes not Consistently Interpreted and Applied

Even with adoption of a statewide uniform code, a wide variety of different code interpretations occurs. Each building official is still able to interpret the code as he or she understands it. State and local building officials and inspectors acknowledge there are differences in interpretations among inspectors, and that codes are enforced according to the individual inspector's interpretation.

During the audit, we identified many variations in interpretations of model code requirements. Some local jurisdictions were requiring certain materials or types of construction not required by the state building code. For example, CABO One and Two Family Dwelling Code requires the door separating an attached garage and living area to be equipped with either a solid wood door not less than 1 3/8

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inches thick or a 20 minute fire-rated door. We identified one city that would not allow use of a solid wood door and required installation of a 60 minute fire-rated door. Another city would allow only certain brands of fire-rated doors to be used. Other examples of differences in interpretation and application of building codes include:

- Interpretations regarding the installation of safety glass in doorways and entryways differ. Some jurisdictions mandate installation of glazed safety glass for any windows in an entryway, while other jurisdictions require only windows on the same plane as the door to be glazed safety glass.
- Building officials provided different interpretations of when an engineer's stamp is required on plans for fire suppression sprinkling systems.
- Home builders cited instances where a home was built and approved by the building official in one city while plans for the exact same home were not approved in another city.
- Building officials offered differing opinions on whether or not the walls of an unfinished basement must be insulated.

Interviews with building contractors, trades persons, and trade organization representatives indicated differences in interpretations among state and local inspectors is common. Various groups involved in the construction industry believe there needs to be more uniform interpretation of the state building code by building enforcement officials. The Montana Building Industry Association states this is a major concern and striving for more consistent interpretations among various code enforcement officials should be a priority.

Differences in code applications and interpretations create problems and difficulties for the regulated community. The lack of uniform code interpretation adds to difficulties in obtaining approval of design plans and construction, and circumvents one of the principle legislative intents for the Montana building code system -- consistency between jurisdictions. Interpretation differences have resulted in after the fact changes which are costly to correct. In addition, it adds time to complete construction which also can

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increase costs. Some examples of unnecessary cost increases identified during the audit include:

- One local jurisdiction required a homeowner performing remodeling work to rewire an entire residential structure to meet current codes. The homeowner is required to bring only the remodeled area into compliance with current electrical codes. The homeowner is not required to rewire other rooms to meet current codes.
- Different interpretations of fire-rating requirements for entryway doors between attached garages and living areas in residential homes can result in substantial differences in costs. A 20 minute fire rated door costs approximately \$125, a 60 minute fire-rated door about \$200, and a solid wood 60 minute fire-rated door around \$240.

No Process to Address Consistency

Although there are currently 55 jurisdictions responsible for administering and interpreting the state building code there is no central process for reviewing and determining how the state building code will be interpreted throughout the state. Each jurisdiction is responsible for its own interpretation and appeals of interpretations are handled within the jurisdiction. There is no organized method for building officials to come together to discuss code requirements and their interpretations and reach a consensus.

Other States have Addressed Consistency Problems

Other states have also found similar problems with code consistency issues and have successfully implemented processes for providing uniform code interpretations. For example, Minnesota developed and implemented a state uniformity committee consisting of a group of state and local building officials. They developed a process for receiving questions about code interpretations; discussing questions and issues; making a determination; and, providing a written statement to building officials. While the official interpretation is not legally binding on jurisdictions, it is a guideline for all parties and sets a standard that has been agreed upon by the majority of the state's building officials. Oregon and Washington also use similar methods for providing guidance on interpreting model code requirements. The following figure illustrates an example of a question regarding a code requirement and the guideline that was issued by another state.

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Figure 4

Example Code Interpretation Guideline Statement

Building Code Interpretation

Inquiry:	96-1
Subject:	Enclosed Useable Space Under Stairs
Code:	1994 UBC Section 1006.12
Submitted By:	State Uniformity Committee
Approved By:	State Building Official
Issue Date:	January 10, 1997
Question:	Should useable space under a stairway with a cased opening be considered enclosed? (all walls framed, with or without drywall, on the room side, doorway framed but no door)
Answer:	"No. The opening would allow any events to be visible at their inception. If a door were present, detection could be appreciably delayed, therefore the space would be considered enclosed." (Per ICBO response of August 25, 1997)
Committee Comments:	<p>The area below the stair is still open to the atmosphere of the remainder of the basement, thereby permitting early detection of possible fire if a proper working smoke detector(s) has been installed in the basement. The underside of the stair would not be required to be protected in this case. As the inspector for this scenario cannot determine or predict if or when the door would be installed, he/she can only recommend that the area below the stairs be protected for future use. If, in addition to the drywall a door is installed, then the area below the stair would have to be protected.</p> <p>Adopted by committee November 8, 1996 and ratified at the 1st Annual Institute of Building Officials on December 28, 1996.</p>

Source: Minnesota Uniformity Committee.

Department Should Promote Consistency

While the department has not taken an active role in promoting consistency in code interpretation and application, the department does have statutory responsibilities for such activities.

Consistency in code interpretation and application could be improved through developing a central forum for discussing code interpretation issues. A formal process should include opportunities for asking questions about code interpretations, discussions of potential impacts of various interpretations, development and publication of code interpretations, and distribution of interpretations to jurisdictions throughout the state. The process

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could include a variety of affected parties including building code officials, fire officials, trades persons, and trade organizations.

While the department has informal methods for promoting consistency in code interpretations by its own staff, these interpretations are not formally recorded or documented for future reference. A formal document would improve consistency by providing a single resource and minimizing the risk that different information will be disseminated by different staff.

Construction industry groups have voiced support for establishing a universal code interpretation procedure to be used by the department, local government building officials, and other affected parties. The Montana Building Industry Association recently completed a study in conjunction with the Montana Board of Housing on residential housing affordability and lists establishing a method for uniform code interpretations as one means of reducing housing costs. In addition, Montana Technical Council, Montana Electrical Contractors Association, the Master Plumbers Association of Montana, and the Montana State Fire Chiefs Association also support this recommendation.

Recommendation #4

We recommend the department work towards achieving a more uniform interpretation of the state building code by establishing a statewide code interpretation procedure which should include:

- A. Forums for discussing code interpretation issues.**
- B. Documenting decisions.**
- C. Maintaining permanent records of interpretations.**
- D. Distributing decisions to local government building officials and other interested parties.**

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Oversight of Local Code Enforcement Program Finances

During our fieldwork with city and county code enforcement programs, we discussed program finances with local building officials and inspectors and reviewed available documentation to gain an understanding of:

- How building permit fees are set.
- What are the permit fees for specific constructions projects.
- How fees derived from building permits are used by cities and counties.
- Whether fees are commensurate with building code program costs.
- If local governments have a plan to keep program fees commensurate with costs.

We also examined methods used by the Department of Commerce to monitor city and county compliance with financial-related provisions.

Building Permit Fees Assessed for Construction

Cities and counties establish building permit fees which will be assessed in their jurisdiction. Statutes provide some guidance in setting these fees. Section 50-60-106 (2)(e), MCA, states each municipality may collect reasonable fees which shall be comparable to fees imposed or prescribed by existing local building regulations. During the audit, we found cities and counties develop their own fee structure. Permit fees are generally based upon some means of valuing a project's cost and permit fees are assessed based upon that cost. The various cities and counties commonly use different methods for valuing projects. This has resulted in a wide range of values being assigned to a project and ultimately in a wide range of fees assessed for building permits.

As part of this audit, we gathered data from 33 cities and counties to determine what local permits are required and cost of those permits for two example structures. We established project specifications for a typical residential structure and a typical commercial structure. We then asked city officials to calculate the local building permit fees for these two structures. The basic residential structure was a 1,400 square foot building with a crawl space and no garage. It had 3 bedrooms, 1 full bath and a 3/4 bath. The commercial structure was a 3,056 square foot light commercial office building placed on a

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concrete slab foundation, "Type B" occupancy group, and construction type "V-N." The following table depicts various building permits and fees which cities and counties would assess. Information for Department of Commerce building fees is also provided for comparison purposes.

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Table 7
Cost of Permits in Certified Cities and Counties
June 1997

City or County	Residential Permit Fees				Commercial Permit Fees			
	Building	Electrical	Plumbing	Mechanical	Building	Electrical	Plumbing	Mechanical
Anaconda-Deer Lodge County	\$622	S	S	S	\$776	S	S	S
Big Sandy	\$30	S	S	S	\$30	S	S	S
Billings	\$884	\$130	\$111	\$38	\$1,280	\$120	\$69	\$40
Butte-Silver Bow County	\$548	\$100	\$114	\$29	\$879	\$75	\$81	\$35
Chinook	\$862	S	S	S	\$892	S	S	S
Columbia Falls	\$602	\$130	\$109	\$60	\$992	\$120	\$67	\$70
Conrad	\$380	S	S	S	\$643	S	S	S
Cut Bank	\$496	S	S	S	\$599	S	S	S
Deer Lodge	\$193	S	S	S	\$414	S	S	S
Forsyth	\$622	S	S	S	\$776	S	S	S
Glasgow	\$336	\$65	\$50	C	\$1,090	\$75	\$39	\$50
Great Falls	\$709	\$92	\$129	\$41	\$1,190	\$120	\$86	\$41
Hamilton	\$885	S	\$118	S	\$1,236	S	\$69	S
Hardin	\$1,288	S	S	S	\$1,736	S	S	S
Havre	\$482	S	\$50	\$13	\$790	S	\$26	\$20
Helena	\$1,016	\$129	\$105	\$60	\$1,353	\$119	\$57	\$70
Hysham	\$532	S	S	S	\$815	S	S	S
Kalispell	\$581	S	\$99	\$60	\$1,309	S	\$51	\$70
Laurel	\$766	S	\$133	S	\$1,820	S	\$84	S
Libby	\$868	S	S	S	\$1,095	S	S	S
Livingston	\$945	S	S	\$60	\$1,234	S	S	\$70
Miles City	\$656	S	S	S	\$1,786	S	S	S
Missoula	\$482	\$130	\$87	\$30	\$794	\$120	\$51	\$30
Plains	\$105	S	S	S	\$155	S	S	S
Polson	\$1,187	S	S	\$60	\$1,602	S	S	\$70
Red Lodge	\$874	S	S	S	\$1,082	S	S	S
Richland County	\$161	S	S	S	\$236	S	S	S
Roundup	\$25	S	S	S	\$35	S	S	S
Shelby	\$731	S	S	S	\$1,032	S	S	S
Sidney	\$161	S	S	S	\$236	S	S	S
Stevensville	\$498	A	A	A	\$1,019	A	A	A
Troy	\$380	S	S	A	\$884	S	S	A
Whitefish	\$1,030	S	\$99	\$60	\$1,716	S	\$36	\$70
Average City Permit Fee	\$604	\$111	\$100	\$46	\$955	\$107	\$60	\$53
Dept. of Commerce Permit Fees	NA	\$130	\$99	NA	\$660	\$146	\$57	\$70

Legend

A = These fees combined with building permit fee.
C = Plumbing and mechanical permits combined
S = State jurisdiction, therefore, department issues permits required by statute
NA = Not applicable because exempt from state jurisdiction.

Source: Compiled by the Legislative Audit Division.

As illustrated in Table 7, there is a wide range of fees assessed for issuing building, electrical, plumbing, and mechanical permits.

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Impact Fees Also Assessed for Construction

It is also common for cities to assess infrastructure impact fees when construction occurs. Eighty-eight percent of the cities in our sample assessed impact fees (impact fees are not included in Table 7). Impact fees are an important consideration because of public misconception that these fees are part of fees paid for building permits. Building permit fees fund inspections to check compliance with building code requirements while impact fees pay for local infrastructure. Infrastructure includes water and sewer connections; street, curbing and sidewalk modifications; zoning certifications; and excavation work. City building departments are often the local group responsible for collecting impact fees. We found impact fees in our sample ranged from \$292 to \$3,440.

Local Fee Use and Documentation

Statutes specify municipalities and counties may collect reasonable fees for enforcing building code provisions. The Administrative Rules of Montana provide further guidance and contain restrictions regarding use of building permit fees. Since 1979, the rules have stated, "All fees for funding the code enforcement shall be accounted for separately and there shall be an audit route for expenditures charged against the account." In 1996, the Department of Commerce added additional guidance and restrictions. Administrative rule section 8.70.208 currently stipulates:

- Fees only be used for costs related to building code enforcement.
- Related costs include those costs directly related to code enforcement.
- Indirect costs are limited to 30 percent in lieu of using actual indirect costs.
- Excess permit fees must be placed in a reserve to be used in subsequent years.
- A maximum reserve of 12 months.
- Local government maintain a system and records to document revenues, expenses, fee use, reserves, use of reserves, and fee adjustments.

Administrative rules also state, "It is not intended that permit fees be used to support fire departments, planning, zoning or other activities except to the extent that employees in those programs provide direct plan review, inspection or other building code enforcement activities for the building code enforcement program."

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Fee Use not Adequately Documented

We contacted local building department officials and examined documentation to determine local government compliance with the aforementioned administrative rules. We found widespread non-compliance with administrative rule provisions governing city and county building code program finances. The majority of local programs are not maintaining documentation which provides for an "audit trail" of expenditures. Only 3 of 36 cities contacted used either a special revenue account or distinct coding to track building code program expenditures. Thus, we were not able to obtain actual program expenditure data for 33 of the local governments sampled.

The lack of documentation effected our ability to determine whether city and county code enforcement programs establish fees which are commensurate with costs. In an effort to examine this issue, we asked local building officials to supply estimated financial data. Based on actual and estimated financial data we found:

- 39 percent (14/36) of local governments have established fees in excess of programs costs.
- 36 percent (13/36) of local governments have established fees at a level either commensurate with or less than program costs.
- 25 percent (9/36) of local governments could not provide estimated financial data.

Local Fees not Always Commensurate with Costs

City and county code enforcement programs do not always establish permit fees at levels commensurate with costs. Many cities appear to be charging fees greater than needed to fund the building code enforcement program. We were able to estimate the surplus amount for 12 of 14 local governments which appear to have excess revenue. The annual surplus ranges from \$275 to \$335,926. When stated as a percentage of building code program costs, the surplus ranges from 3 to 349 percent. Some city building officials readily admit they collect excess revenues from building permits and use the excess to fund other local government operations. One city official indicated they had been collecting surplus building permit fees since 1985. Several cities indicated they have not raised their fees in many years in an attempt to keep the cost of permits reasonable.

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Department Does not Monitor Compliance

The Department of Commerce does not monitor local government compliance with statutory and administrative rule provisions governing municipal and county building code program finances. Neither the Building Codes Bureau nor Local Government Audit Program test compliance with these provisions. The department has historically taken a "hands-off" approach to monitoring city and county building code programs. Officials did not believe they had a strong statutory oversight role. Although section 50-60-302, MCA, requires the department to set forth rules governing the certification of municipal and county building code programs, statutes contain no language or provisions pertaining to monitoring local building code programs once certified.

The department's oversight role will be changing. Legislation passed in 1997 (House Bill 388) clearly mandates a strong oversight role for the department. This legislation also places statutory financial guidelines and restrictions on local building code enforcement programs. The legislation is effective July 1, 1998. City and county building code programs must be in compliance with these provisions at that time. This legislation provided more stringent guidelines for city and county building code department finances and mandated the Department of Commerce oversee local government compliance. Building Codes Bureau was authorized additional funding to cover the costs of overseeing local government building code program finances.

Department Needs Monitoring Process

Although the Department is in the process of drafting administrative rules to incorporate the financial and reporting-related requirements of House Bill 388, it has done little else to prepare for these requirements and the monitoring it is mandated to perform. The department needs to determine how it will assess local government compliance and develop documented internal guidelines for use by staff. The Building Codes Bureau could work with the Department of Commerce's Local Government Audit Program to establish a monitoring procedure and a method for ensuring municipal compliance. In addition, the department could use the existing local government audit function as a means of supplementing its monitoring efforts. This could be accomplished by specifying contract

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auditors specifically test municipal compliance with statutes and rules governing local building code program finances during future local government audits.

Recommendation #5

We recommend the department take the following steps to monitor city and county building code program compliance with financial-related statutes and administrative rules:

- A. Develop an internal process for monitoring compliance.**
- B. Develop documented internal guidelines regarding monitoring.**
- C. Require contract auditors specifically test municipal compliance with applicable statutes and administrative rules during future local government audits.**

Department Certification and Oversight of Local Code Enforcement Programs

The 1997 Legislature mandated closer monitoring of city and county building code programs with passage of House Bill 388, effective July 1, 1998. Statutes stipulate the department shall require a detailed and fully documented annual report from a local government with a certified code enforcement program to ensure continued compliance with all requirements of applicable statutes and rules. The annual report is to include:

- Certification the code enforcement program complies with statutes and department certification rules.
- Current code enforced by cities and counties.
- A current list of fees.
- Plan for code enforcement.

Statutes also state if review of the annual report identifies compliance problems, the department shall immediately conduct onsite evaluation. The department is required to set forth rules and standards governing certification which must include provisions for:

- Prompt revocation of certification for refusal or failure to comply with any applicable statute or rule.
- Enjoining a city or county program in district court.

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- Ensuring that all code enforcement program functions are being properly performed at all times.

Overall, certification requirements were significantly strengthened by the 1997 Legislature and local government code enforcement programs are to be monitored by the department.

Minimal Oversight by Department

Historically, the state has exercised very little oversight of city and county building code programs. Local governments were left to operate their programs independently. Although the Department of Commerce oversees initial certification, once a city or county is certified to administer and enforce codes, little follow-up monitoring is done. Officials explained that when program responsibility was transferred to the Department of Commerce they attempted to require cities to provide evidence they should continue to be certified. The department's efforts were met with resistance by certified cities and counties and the department decided it lacked clear statutory authority to monitor local programs once certified.

Department Action in Response to HB 388

With the passage of House Bill 388, the legislature made certifying and monitoring city and county code enforcement programs a priority. The department is in the preliminary stages of planning its action in the area of certification and monitoring. Department staff are drafting updated administrative rules to reflect the requirements of House Bill 388. In addition, primary responsibility for certified programs has been re-assigned to the bureau's attorney. The bureau received authorization to fund an auditor position as a result of House Bill 388. This position will be primarily responsible for working with certified city and county building code programs.

Additional Emphasis Needed

However, the department needs to place additional emphasis upon other steps it could take to prepare for the changes. The department should develop a process to monitor compliance with certification requirements. It would also be beneficial for the department to develop documented internal guidelines and a compliance checklist for use by department staff. In addition, the department should develop a method for recording city and county operational-related concerns which require follow-up. With the provisions enacted by

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the 1997 Legislature, the department will be required to take a much stronger role in the monitoring of certified programs.

Recommendation #6

We recommend the department:

- A. Develop a process to monitor city and county compliance with certification requirements.**
- B. Prepare written internal guidelines for use by department staff to monitor local government certification.**
- C. Develop a compliance checklist.**
- D. Develop a method for recording possible concerns or deficiencies with local government programs for follow-up by department staff.**

Chapter V

Interagency Coordination and Communication

Introduction

As a regulator of building construction, the Department of Commerce, Building Codes Bureau interacts with other state agencies during the course of administering and enforcing model codes. This chapter discusses concerns related to interagency coordination and cooperation.

Interaction with Department of Justice Fire Prevention and Investigation Bureau

There are two groups responsible for conducting inspections of buildings, Department of Commerce, Building Codes Bureau and the Department of Justice, Fire Prevention and Investigation Bureau (FPIB). The Department of Commerce oversees the construction of or modifications to buildings including fire-related aspects of the building. This includes construction of fire separations and exits, installation of fire doors, automatic fire sprinkler systems and smoke detectors which are all part of the building code. Once construction is completed, the building will be subject to inspections by a fire official. Fire officials examine buildings to ensure continued safety of the building and occupants. Fire officials check to see that exit signing is in place and exits are not blocked, fire sprinklers and smoke detectors are working, and storage of combustible items is done in a safe manner. Generally speaking, the building official is responsible for overseeing building construction and the fire official is responsible for overseeing building use and maintenance.

Jurisdictional Questions Exist

While both agencies are responsible for protecting life and property through enforcement of their respective codes, there is confusion regarding the authority and jurisdiction of each agency and a lack of overall communication and coordination between agencies. Interviews with agency management and staff revealed different opinions regarding the lines of authority and responsibility for enforcing their respective codes. For example, FPIB is statutorily required to inspect public facilities for compliance with fire codes. When fire code issues are noted, FPIB has recommended changes to a building's existing structure or equipment in order to comply with fire codes. Such modifications require approval and permits from the Department of Commerce prior to making modifications. However, department interpretation of building codes, and subsequent recommendations for addressing fire-related issues may be contrary to FPIB recommendations.

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Interagency Coordination and Communication

Local officials and construction trades have voiced concerns over the same issue. The following examples illustrate some of the problems that have arisen because of uncertain lines of jurisdiction between the two agencies.

- There have been several instances where school officials needed to address fire-related life and safety issues in existing school buildings, but received different interpretations and conflicting instructions from the two regulatory agencies. FPIB required some existing schools install fire sprinkler systems to address fire-safety issues. When school officials approached the Department of Commerce for necessary permits, department staff advised them that in this particular application, fire sprinklers were not required by the Uniform Building Code and if school officials still desired to make fire-related safety improvements, there were alternative fire suppression systems allowed by the Uniform Building Code that were less costly to install.
- FPIB agreed to allow installation of a residential fire sprinkler in a public building. However, Department of Commerce interpretation of the Uniform Building Code determined such a system is not intended for use in this type of building. Thus, Department of Commerce could not approve the planned installation.

The lack of clearly defined parameters of jurisdiction and enforcement authority and the lack of coordination between the agencies has resulted in conflicting information and instructions from the two agencies. The cost differences between options for addressing life and safety issues can be substantial, particularly for existing or older structures. In one case, estimated cost to install a fire sprinkler system in an existing 20,000 square foot school is \$98,000. However, there are less costly alternatives such as smoke detectors, fire alarms or self-closing corridor doors. Furthermore, the confusion regarding allowable corrective action for fire code life and safety violations delays implementation of necessary corrective action.

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Interagency Coordination and Communication

Agencies Should Coordinate Efforts

The Department of Commerce and FPIB each have responsibilities for enforcing codes adopted by the respective agencies. The Uniform Building Code and the Uniform Fire Code are companion codes and are not designed to stand alone. The two codes reference each other. Each code provides the other code with standards designed to protect and preserve life and property from fire and explosive hazards. Because the two codes are companion codes, it is imperative the two agencies coordinate efforts to ensure consistency in code interpretation and application. Clearly, a close liaison between these two agencies is necessary.

Need to Clarify Jurisdiction

Despite the close relationship between the Uniform Building Code and Uniform Fire Code, and the goals and the objectives of the Department of Commerce and FPIB, there is no mechanism for addressing issues that affect both agencies, or for resolving conflicts. A Memorandum of Understanding (MOU) exists between the FPIB and Building Codes Division dating to 1980. However, since this MOU was developed, responsibility for building code enforcement was transferred from the Department of Administration to the Department of Commerce. In addition, the MOU is very brief and lacks detail. It addresses only general responsibilities of each agency, and does not address jurisdiction and coordination.

Since the two agencies have similar goals and objectives relating to protecting and preserving life, safety, and property, the agencies need to clarify their respective roles and coordinate efforts. More consistent interpretation and application of their respective codes would reduce confusion by building owners and responsible parties, as well as reduce costs, time, and effort of persons trying to address life and safety issues through corrective action. Issues which should be addressed through an updated MOU include jurisdiction of each agency, means of resolving differing code interpretations, and coordination of efforts.

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Interagency Coordination and Communication

Recommendation #7

We recommend the Department of Commerce seek a Memo of Understanding with the Department of Justice, Fire Prevention and Investigation Bureau which specifies jurisdiction of each agency and how agency activities will be coordinated.

Interaction with the Board of Plumbers

State licensing laws require the service of licensed plumbers in certain situations. Statutes require, “Any person working at the field of plumbing in any incorporated city, town or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system shall first secure a state license. . .” The law also provides specific exceptions to licensure requirements. In addition to other exemptions, section 37-69-102, MCA, specifically exempts the following instance from requiring the service of a licensed plumber:

- (a) “where an owner of a single-family residence used exclusively for his personal use makes the installation himself for all sanitary plumbing and potable water supply piping. . .”

The Department of Commerce, Building Codes Bureau, assists licensing boards in monitoring adherence to the licensing laws. When department staff issue permits, they check for professional licenses. In those situations requiring the services of a licensed professional, the department will only issue the permit upon verification of licensure. Department inspection staff also check for professional licenses during visits to construction sites.

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Interagency Coordination and Communication

Difference of Opinion Exists

There is a disagreement between the Building Codes Bureau and the Board of Plumbers regarding whether or not the services of licensed plumbers are needed when a homeowner hires, or has someone other than himself, perform plumbing work on a single-family residence. The bureau's interpretation of the law is that when a homeowner hires someone to perform any plumbing work on a single family dwelling connected to public water or sewer, the work should be performed by a licensed plumber. If the dwelling is not connected to a public water supply or a public sewer system, the bureau has determined the work does not need to be performed by a licensed plumber and they do not check for professional license when issuing a plumbing permit in this situation. However, the Board of Plumbers follows statutes that are specific as to licensing which specifies that whenever a person is hired to perform any plumbing work the person must be licensed.

Statutes are Confusing

The statutes regarding plumbing licensure are confusing. As a result of this confusion, the department and the Board of Plumbers have been offering conflicting opinions to the public and may have improperly enforced licensing and permitting requirements.

We believe it would be beneficial for the department and the Board of Plumbers to work together and seek clarification of this issue through an Attorney General's opinion and pursue additional legislative clarification if needed.

Recommendation #8

We recommend the department work with the Board of Plumbers and obtain an Attorney General's opinion to clarify which situations are exempt from licensing laws for plumbers.

Chapter VI

Department Operations

Introduction

The daily operations of the Department of Commerce, Building Codes Bureau, center around its inspection function. This is where the bulk of the bureau's workload occurs. Activities involved with the inspection function include: processing permit applications, reviewing construction design plans, issuing permits, conducting inspections, and checking for professional licenses. The bureau also is responsible for administrative-related duties such as budgeting, rule-making and processing municipal requests for extended jurisdiction.

This chapter provides a general overview of bureau operations and discusses the results of audit work which was conducted to examine bureau operations. Our review identified areas where operations appear to be functioning as intended. We also found areas where improvements could be made. The following sections summarize our observations, including recommendations for improvement.

Areas Operating as Intended

We reviewed various operational aspects of the Building Codes Bureau. We found a number of areas operate as intended and provide the bureau assurance of proper program operation. The following sections outline these areas.

Processing Permit Applications and Issuing Permits

Parties undertaking construction or installation of equipment in buildings under the jurisdiction of the department must complete and submit an application for a permit, submit the required fee and secure a permit prior to undertaking work. During the audit, we examined procedures used by the bureau to process applications and issue permits for building, electrical, mechanical and plumbing work. We found there is a reasonable process in place for processing applications and permits; there are internal controls to safeguard deposits; there is a procedure to verify permits are issued to appropriate parties; there is a means in place to assure permits are issued in a timely manner; staff are cross-trained to perform all permitting functions; and, data is input into an automated system as a means of assigning and monitoring work.

Conclusion: The method the bureau uses to process applications and issue permits is reasonable and is working as intended.

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Reviewing Construction Plans

Bureau staff review construction design plans for compliance with the state building code. Staff also review electrical, plumbing, and mechanical system schematics when required. The plan review stage is the first step in the process for assuring compliance with codes. The goal of the process is to identify non-compliance prior to construction. Bureau staff work with the design community to ensure plans comply with codes. The review process allows staff and designers to address non-conformance and find alternative solutions which meet the intent of code requirements. During the audit, we examined the methods the bureau uses to administer this process. We reviewed documentation and discussed procedures with bureau officials and staff. We found there is a reasonable method in place to assign work to review staff, calculate plan review fees, safeguard deposits, and track work being processed. Although an issue arose regarding insufficient administrative support to handle the existing workload, it appears the bureau is working to resolve this issue by assigning additional permanent and temporary staff.

Conclusion: The method the bureau uses to process plan reviews is reasonable and functions as intended.

Field Inspections

During the audit, we examined the bureau's inspection process. The Uniform Building Code, National Electrical Code and Uniform Plumbing Code specify "key" stages at which a project should be inspected for code compliance. There are a minimum of five key inspections required by the Uniform Building Code: 1) foundation; 2) concrete, slab, under flooring; 3) framing; 4) lath, gypsum; and, 5) final. Codes require electrical and plumbing installations to be inspected at a minimum of three key stages of work: 1) service connection; 2) installation rough-in; and, 3) final. Overall, the bureau's inspectors are not always able to perform building inspections at the five key stages of construction and inspections of electrical and plumbing installations as required by the codes. There are many factors which directly affect the bureau's inspection process:

- The volume of permits issued and inspections required.
- Physical travel distances required to reach sites.
- Failure of contractors to notify inspectors of work progress.

- Weather or other physical conditions which hamper access to a site.
- Lack of accurate physical address or site location.
- Inspectors scheduled and unscheduled time off.
- Workload fluctuations due to seasonal nature of construction.

Since the department's area of responsibility encompasses much of the state, staff are responsible for inspecting large geographical areas and all construction cannot be thoroughly inspected. The department has attempted to provide the maximum level of coverage with current resources. The department divided the state into regions and assigned staff to specific regions. In addition, building, plumbing, and mechanical inspections are conducted on a route basis. The department made electrical inspections a priority and employed more electrical inspectors and assigned these inspectors smaller areas to inspect. Because of the smaller area of coverage, electrical inspections are scheduled in an effort to inspect electrical installations at critical stages. To minimize administrative overhead expenses, field staff use their homes as a base office.

The current process used by the department to inspect construction sites and equipment installations is reasonable based on the large physical area it has to cover and the volume of permits issued and subsequent inspections required. Because of the large territory it is responsible for, it is difficult to provide more thorough coverage without substantial increases in staffing and other resources. While staffing increases could improve inspection coverage, any increases would have to be funded through raising permit fees.

Future Workload

There are two primary factors which will directly affect the bureau's inspection program in the future: increased staffing and decreased number of permits. The bureau was authorized an additional 14 FTE for the 1998-99 biennium. Eight of these positions are for inspectors. Additional staff were authorized in anticipation of expanded duties due to legislative changes and potential workload increases. However, it is unknown at this time whether the anticipated additional work load will occur. In addition, the number of total permits issued by the bureau has decreased over the past two years. With number of staff increasing and number of permits issued decreasing, the bureau may be able to be more successful at

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meeting inspection requirements of the codes. It is difficult to assess future impacts on workload at this time.

Conclusion: With existing resources, the bureau cannot always conduct the minimum number of inspections required by model codes. However, given the large area of responsibility and amount of work involved, the department's current method of inspecting construction sites and equipment installations is a reasonable approach.

Checking for Professional Licenses

There are certain situations when electrical and plumbing installations must be performed by licensed individuals. As a courtesy to the professional licensing boards, the bureau assists with enforcing these requirements. The bureau does this by ensuring only properly licensed electricians and plumbers purchase permits for plumbing projects and by conducting on-site verifications of licenses. Potential violations are referred to the appropriate licensing boards for follow-up. During the audit, we interviewed bureau management and staff, observed operations and reviewed related documentation to assess reasonableness of the bureau's efforts. We found the bureau conducted 4,186 license checks during fiscal year 1996-97. In addition, bureau staff responsible for issuing electrical and plumbing permits check to ensure permits are only issued to licensed individuals when applicable. We also found the bureau refers potential license violations to the licensing boards.

Conclusion: The procedures used by the bureau to check compliance with electrical and plumbing related licensure requirements are adequate and potential violations are referred to the respective licensing boards.

Setting Plan Review and Permit Fees

Bureau operations are funded through state special revenue derived from fees assessed for reviewing design plans for issuing work permits. Statutes place general restrictions on the Department of Commerce regarding how fees collected for enforcing the state building code can be used. Concerns were raised during the past regarding the amounts at which permits fees were set as the department was collecting excess revenue. During the audit, we examined documentation to determine whether fees are set at a

reasonable level which is commensurate with program costs. Our review revealed the department monitors the fund balance and adjusts fees to ensure excess funds do not accumulate. As a result of its efforts, the fund balance is declining. The bureau maintains less than a one year reserve.

Conclusion: It appears fees established for administering the program are reasonable and the balance maintained in the state special revenue account is not excessive.

**Administrative Rule
Adoption**

The Montana Administrative Procedures Act, contained in Title 2, chapter 4, MCA, provides a framework to ensure the public is provided reasonable opportunity to participate in the operations of government. The primary purpose of the act is to make the rule adoption process of executive branch agencies open to the public. The Montana Administrative Procedures Act contains specific requirements state agencies must abide by when proposing administrative rules. These requirements include providing notice to persons who have requested notification of rule-making proceedings. We reviewed documentation and conducted audit work to ascertain bureau compliance with this provision.

Conclusion: Audit work revealed the bureau is adhering to the requirements of Montana Administrative Procedures Act for notifying persons of rule-making proceedings.

**Processing Requests for
Extended Jurisdiction**

Municipalities are allowed to extend their area of jurisdiction in order to administer and enforce the state building code adopted for the local area. In order to do this, a municipality must submit a written request to the department. The department is responsible for approving the request. The department established administrative rules pertaining to processing these requests. After July 1, 1998, cities applying to extend their area of jurisdiction must also obtain the written consent of the county.

The city of Billings has extended jurisdiction and has expanded these extended boundaries over the years. In 1984 and 1985, the city notified the state it had expanded its boundaries as additional areas were annexed into the city limits. The city had in effect "rolled" its

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extended jurisdictional boundaries outward as areas were annexed into the city. The department took the position that once a municipal jurisdictional area is approved to 4 ½ miles beyond the corporate limits of the city, it remains in effect for 4 ½ miles beyond those limits no matter how the corporate limits are subsequently altered. Consequently, the department maintained it was not required to treat these “extension updates” as written requests for an extended jurisdictional area. The Attorney General, in an opinion dated April 4, 1996, concluded the department’s position was erroneous. Thus, each time a municipality extends its boundaries of jurisdiction, it must submit a written request to the department.

During the audit, we examined how the department responded to the Attorney General’s opinion and whether the response appropriately resolved the issue. Discussions with department staff and a review of documentation revealed the department reviewed the files for all nine cities with extended jurisdiction. They found Billings was the only city which extended its boundaries during the time frame in question. The department required the city of Billings to submit written requests to expand its jurisdiction and followed the procedures outlined in administrative rules to process the request which included a comment period and public hearings.

Conclusion: The department appropriately responded to the Attorney General’s opinion regarding extended jurisdictions.

Program Operations Which Could be Improved

We did identify several aspects of the management and operation of the bureau which could be improved with increased management emphasis. These areas include: staff training, planned communication, and developing an operational procedures manual. The following sections discuss our findings and recommendations.

Staff Training

During the audit, we examined the issue of staff training. Discussions with bureau officials and staff, and a review of documentation revealed only minimal training is provided to the majority of bureau staff. Training is provided to electrical inspectors in order to meet the continuing education requirements for maintaining journeyman and master electrician licenses. However, other bureau staff have not had many training

opportunities over the years. Plan review staff and building inspectors have attended only a few courses over the past five years. The same is true of plumbing inspectors. Bureau staff are concerned with the amount of training they have received. Staff consistently indicated the lack of training regarding code updates and changing technology is a key concern for them.

Training is an important means of expanding knowledge and increasing proficiency of staff. It is one of the key elements for a successful code enforcement program. If building officials and inspectors are not proficient in understanding model codes, the quality of construction plan reviews and inspections can suffer. Contractors and individuals look to department staff as the code “experts” and expect them to be proficient and able to check work to ensure compliance with code provisions.

The bureau has recently provided some training to staff conducting reviews of design plans and inspecting building construction. The bureau needs to continue its training efforts and make staff training a priority. Suggested areas of training include:

- Code updates.
- New technology, materials, and installation methods.
- Inspection techniques.
- Assessing compliance with handicap accessibility requirements.
- Communicating with the public.
- Dealing with confrontational situations.

Cross-training staff could also be another means of providing training to staff. For instance, providing more field experience for staff performing plan reviews could be a means of supplementing their knowledge. There will be some added costs to the department to provide this necessary training. However, scheduling training during periods of slower workload will lessen the impact of taking staff away from their routine duties. Work tends to slow down during winter months and scheduling training during this time could be beneficial.

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Recommendation #9

We recommend the department develop a comprehensive training program for Building Codes Bureau staff.

Communication Between Central Office and Field Staff

Communication between central office and field staff is a critical element with a decentralized organization. A person's duties within a program are clear only when the activities to be undertaken and the mission to be fulfilled are communicated and understood. A process for collectively informing personnel of on-going issues provides an effective method for ensuring consistency among all staff. Routine staff meetings are one means of fostering communication and improving operations of a department. Such meetings can promote consistency and provide a good forum for discussing issues effecting operations.

Although the bureau schedules monthly staff meetings for its three plan review staff and six building inspectors, other staff have not been routinely afforded this opportunity. Bureau management have not scheduled bureau-wide staff meetings and interaction has been sporadic. Staff expressed concerns with bureau communication and the lack of staff meetings and indicated bureau management needs to provide opportunities for field and central-office staff to meet. Staff believe it would be beneficial to hold regional meetings of bureau inspectors, plan review staff and central-office staff. Though the bureau is relatively small in terms of number of staff, there are many staff who have never even met each other because they are stationed around the state.

During audit work, we noted examples of topics which could be discussed at staff meetings including:

- Equipment needs and concerns of staff for things such as vehicles, computers, and specialized testing equipment.
- Coordinating activities between inspectors.
- Areas for training.
- Code interpretation issues.
- Problem construction sites.
- New technology.

Limited bureau-wide communications can contribute to inconsistencies in operations and impede efficiency and effectiveness of bureau staff. For example, several inspection staff have each developed their own records management systems. In addition, inadequate opportunities for staff discussions can contribute to differing interpretations of code requirements. The lack of routine staff meetings has also contributed to the level of isolation in which field inspectors work. Work isolation is a concern for field staff and staff are frustrated they do not get the level of reinforcement from management and co-workers which could be achieved through better communication.

Because of the decentralized organization of the bureau and the isolated manner in which bureau inspectors work, it would be beneficial for the department to develop a plan for on-going communications for Building Codes Bureau staff. For example, regularly scheduled staff meetings would aid communications among all staff. Staff meetings could be made more productive by querying staff for suggested topics and developing an agenda. In addition, training could be incorporated into staff meetings.

Recommendation #10

We recommend the department develop a plan for regular, on-going communication among Building Codes Bureau staff members.

**Operational Procedures
Manual**

Specific program policies and procedures guide personnel in performing duties in a consistent and accurate manner. Established policies and procedures also strengthen management's control over program operations and help assure continuity of operations and services as staffing changes occur.

Building Codes Bureau operations are documented in an informal manner. We found limited documented guidance available to staff. Staff members also consistently expressed concern with the lack of documented policies and procedures. Although the department has a documented policy manual for general administrative matters such as

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leave policy, there are no formal policies or procedures specific to Building Codes Bureau operations.

During audit work we noted many examples where documented policies are needed including:

- Processing applications and issuing permits.
- Reconciling permit and plan review fees.
- Issuing permits in the field.
- Methods for issuing formal code interpretations.
- Public notice requirements and maintaining a list of interested parties.
- Use of gasoline credit cards.

The lack of documented policies and procedures has contributed to inconsistencies in operations and has impeded efficiency and effectiveness of bureau staff. For example, the bureau recently experienced a significant turnover in clerical staff responsible for issuing permits. Documented procedures would have smoothed the transition process of training new staff and reduced the number of inconsistencies which occurred.

Bureau management occasionally issue written memorandums to provide guidance to staff regarding specific issues. For example, bureau management issued a memo regarding licensure enforcement. However, these memorandums have never been incorporated into any type of a formal operations manual. Program officials have tended to rely on more informal means of communication.

Many of the identified inconsistencies and inefficiencies could be addressed by developing a documented operational manual for bureau activities. Existing written memorandums of guidance could be incorporated into such a manual. The bureau should develop and distribute policies and procedures to bureau management and staff.

Recommendation #11

We recommend the department develop formal operational policies and procedures and distribute to all bureau staff.

Agency Response



MONTANA DEPARTMENT OF COMMERCE

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December 29, 1997

Jim Pellegrini
Deputy Legislative Auditor
Office of the Legislative Auditor
PO Box 201705
Helena MT 59620-1705

Dear Mr. Pellegrini:

Enclosed please find the Department's response to the performance audit report of the Administration and Enforcement of State Building Codes in Montana.

Our response contains the Building Codes Division response for each recommendation. We have included whether or not we concur with the recommendation, action plan and, when possible, anticipated time frames for completion of each plan.

Please feel free to contact me if you have any questions about the enclosed response.

Sincerely,

Peter S. Blouke, Ph.D.
Director

cc: James F. Brown, P.E., Administrator

**MONTANA DEPARTMENT OF COMMERCE
RESPONSE TO PERFORMANCE AUDIT REPORT
(December, 1997)**

**ADMINISTRATION AND ENFORCEMENT OF STATE BUILDING CODES
IN MONTANA**

This document contains the Building Codes Division response to the performance audit report on administration and enforcement of state building codes in Montana. It should be noted that the Division reorganized from a specialty driven organization to a function driven organization effective December 1, 1997, to provide for improved communications between management and field staff, supervision, accountability of operations and service to the public. In addition, the Division is in the early stages of the rule making process for amendments needed to comply with HB 388, which will significantly increase and improve Division oversight of local government building code enforcement programs. Such rules are expected to be effective prior to the July 1, 1998 effective date of HB 388. The Department will assume the lead role in assuring compliance with recommendations 5C and 7, where interagency agreements and coordination between Department divisions are needed.

Recommendation #1

We recommend the Department of Commerce work with various local governments, building contractors, construction trade groups, insurance industry representatives, and fire officials to determine whether changes need to be made to laws or rules covering exemptions to the state building, electrical, mechanical and plumbing codes.

Response:

Concur. This is a very good recommendation and the Building Codes Division will enthusiastically pursue this matter. The Division will make decisions regarding the most effective size and makeup of the task force by the end of February, 1998 and will plan to have task force members appointed by the end of March, 1998. The Division will target the end of July, 1998 for completion of final task force recommendations.

Recommendation #2

We recommend the department:

- A. Ensure city and county building code programs adopt the current statewide building code by requiring local governments to provide copies of adopted ordinances.**
- B. Provide an explanation of statutory and administrative rule requirements pertaining to adoption of state wide building codes to city and county building officials.**

Response:

A. Concur. HB 388 requires local building code enforcement programs to submit annual reports to the Building Codes Division for review for compliance with several requirements. The Division is now in the process of drafting proposed rule amendments to implement HB 388 and will make submittal of copies of code adopting ordinances a required document to be submitted with annual reports. The additional staff authorized by the Legislature to implement HB 388 will provide the Division with sufficient staff to allow for proper review of annual reports for adequacy and follow up, if necessary, on deficiencies. The rules for implementing HB 388 are expected to be in effect before July 1, 1998.

B. Concur. The Building Codes Division will prepare an explanatory form letter that explains the statutory and administrative rule requirements regarding adoption of building codes and send the letter to mayors, city and town council persons, county commissioners, executive administrators, building officials, etc. as appropriate to clarify the requirements. A mailing of this form letter to all certified local government building code enforcement programs will be accomplished by May 1, 1998. In addition, we will amend our mailing list to make sure that the chief executive of each certified local government building code enforcement program (in addition to the local building official) receives a copy of all official notices from the Division.

Recommendation #3

We recommend the department:

- A. Organize an effort to increase training and educational opportunities provided to city and county building officials, plan review staff, and inspectors.**
- B. Establish a video and publication lending library.**
- C. Use existing training programs available from various groups to supplement educational efforts.**

Response:

A. Concur. The Building Codes Division agrees with the need for providing additional training and educational opportunities for local building code enforcement officials and will investigate how to provide such opportunities in the most cost effective and efficient manner. The Division will contact the states mentioned in the audit report plus Minnesota and any others that have tackled this problem in order to benefit from their experiences, and the Division will poll local government building code enforcement officials to determine what forms of training and educational opportunities would be most useful to them. Ultimately, the Division may need additional resources (FTE's and spending authority) in order to implement an effective local government building official training and education program, although such program would likely pay for itself through registration fees paid by local government attendees for seminars, workshops, etc.. The Division will develop a plan for increasing training and educational opportunities for local government building officials by July 31, 1998.

B. Concur. The Building Codes Division will establish and maintain a video and publication lending library, utilizing primarily ICBO resource materials, by December 31, 1998. The Division will assign the responsibility of developing and maintaining the library to the supervisor of the Division Support Services Section and all certified local government building code enforcement entities will be notified of the availability of this new educational resource and encouraged to make use of it.

C. Concur. Existing training programs, such as the seminars developed by ICBO and others, will have to be the cornerstone of providing increased training and education opportunities for local building officials. The Building Codes Division will determine, in the plan to be developed to comply with Recommendation #3A above, how to best utilize existing Division staff in training of local government building code enforcement officials, but will commit to utilizing existing staff to the greatest extent feasible to accomplish the goals of providing more training and educational opportunities for and improving the code knowledge of local building officials. The Division at this time anticipates requiring local building officials that are not supervised by an ICBO certified building inspector or plan reviewer to participate in ten (10) days of one-on-one training with Division plan reviewers and building inspectors to assure a minimum level of code competence. The Division anticipates that such training, which will be free of charge, will commence shortly after July 1, 1998 and end by December 31, 1998.

Recommendation #4

We recommend the department work towards achieving a more uniform interpretation of the state building code by establishing a statewide code interpretation procedure which should include:

- A. Forums for discussing code interpretation issues.**
- B. Documenting decisions.**
- C. Maintaining permanent records of interpretations.**
- D. Distributing decisions to local government building officials and other interested parties.**

Response:

A. Concur. The Building Codes Division recognizes the need for establishing a workable statewide code interpretation procedure as recommended and is aware that other states have apparently developed procedures to improve uniformity. The Division will study procedures being followed by other states, evaluate those procedures for application in Montana, further research this issue, solicit input from local government building officials, trades representatives, MBIA and others and develop an acceptable and workable statewide code interpretation procedure that preserves the authority of local building officials to interpret the codes. A workable statewide code interpretation procedure will be developed by December 31, 1998.

B. Concur. The code interpretation procedure referenced in the response to Recommendation #4A above will include proper documentation of decisions.

C. Concur. The code interpretation procedure referenced in the response to Recommendation #4A above will include development of an acceptable method of maintaining permanent records of interpretations.

D. Concur. The code interpretation procedure referenced in the response to Recommendation #4A above will include development of an appropriate method for distributing interpretations to local building officials and other interested parties.

Recommendation #5

We recommend the department take the following steps to monitor city and county building code program compliance with financial-related statutes and administrative rules:

- A. Develop an internal process for monitoring compliance.**
- B. Develop documented internal guidelines regarding monitoring.**
- C. Require contract auditors specifically test municipal compliance with applicable statutes and administrative rules during future local government audits.**

Response:

A & B. Concur. The Building Codes Division will develop an internal process and guidelines for monitoring compliance with financial-related statutes and administrative rules by July 1, 1998.

C. Concur. The Department will ensure that the Local Government Assistance Division include in contracts with contract auditors the requirement for testing municipalities' compliance with the financial-related statutes and administrative rules governing local government building code enforcement, commencing with audits conducted after July 1, 1998. Reports and findings will be required to be presented in a format that is useable by the Building Codes Division in their monitoring of local government building code enforcement programs.

Recommendation #6

We recommend the department:

- A. Develop a process to monitor city and county compliance with certification requirements.**
- B. Prepare written internal guidelines for use by department staff to monitor local government certification.**
- C. Develop a compliance checklist.**

D. Develop a method for recording possible concerns or deficiencies with local government programs for follow-up by department staff.

Response:

A, B, C & D. Concur. The Building Codes Division will develop a process to monitor city and county compliance with certification requirements, prepare written internal guidelines for monitoring local government certification, develop a compliance checklist and develop a method for recording possible concerns or deficiencies with local government programs for follow-up by department staff, all by July 1, 1998.

Recommendation #7

We recommend the Department of Commerce seek a Memo of Understanding with the Department of Justice, Fire Prevention and Investigation Bureau which specifies jurisdiction of each agency and how agency activities will be coordinated.

Response:

Concur. The Department will take the lead role in developing a Memorandum of Understanding (MOU) with the Department of Justice clarifying the jurisdiction and authority of the Fire Prevention and Investigation Bureau of the Department of Justice and the Building Codes Division of the Department of Commerce and developing procedures for cooperation and coordination of efforts. If possible, the MOU will be completed by December 31, 1998.

Recommendation #8

We recommend the department work with the Board of Plumbers and obtain an Attorney General's opinion to clarify which situations are exempt from licensing laws for plumbers.

Response:

Concur. On December 12, 1997, the Board of Plumbers independently submitted a request for an Attorney General's Opinion to Joe Mazurek, Attorney General, on the issues surrounding exemption from plumber licensing laws. The Building Codes Division will provide input to the Attorney General on this requested opinion.

Recommendation #9

We recommend the department develop a comprehensive training program for Building Codes Bureau staff.

Response:

Concur. The Building Codes Division will develop a comprehensive training program for their staff by December 31, 1998.

Recommendation #10

We recommend the department develop a plan for regular, on-going communication among Building Codes Bureau staff members.

Response:

Concur. The Building Codes Division will develop a plan for regular, on-going communication among staff members by March 1, 1998. It should be noted that the Division reorganized effective December 1, 1997 to effect better communication among field personnel, between field personnel and Helena based management, and to provide for closer supervision of and more accountability for field and Helena based personnel. Please see the attached Division organizational chart.

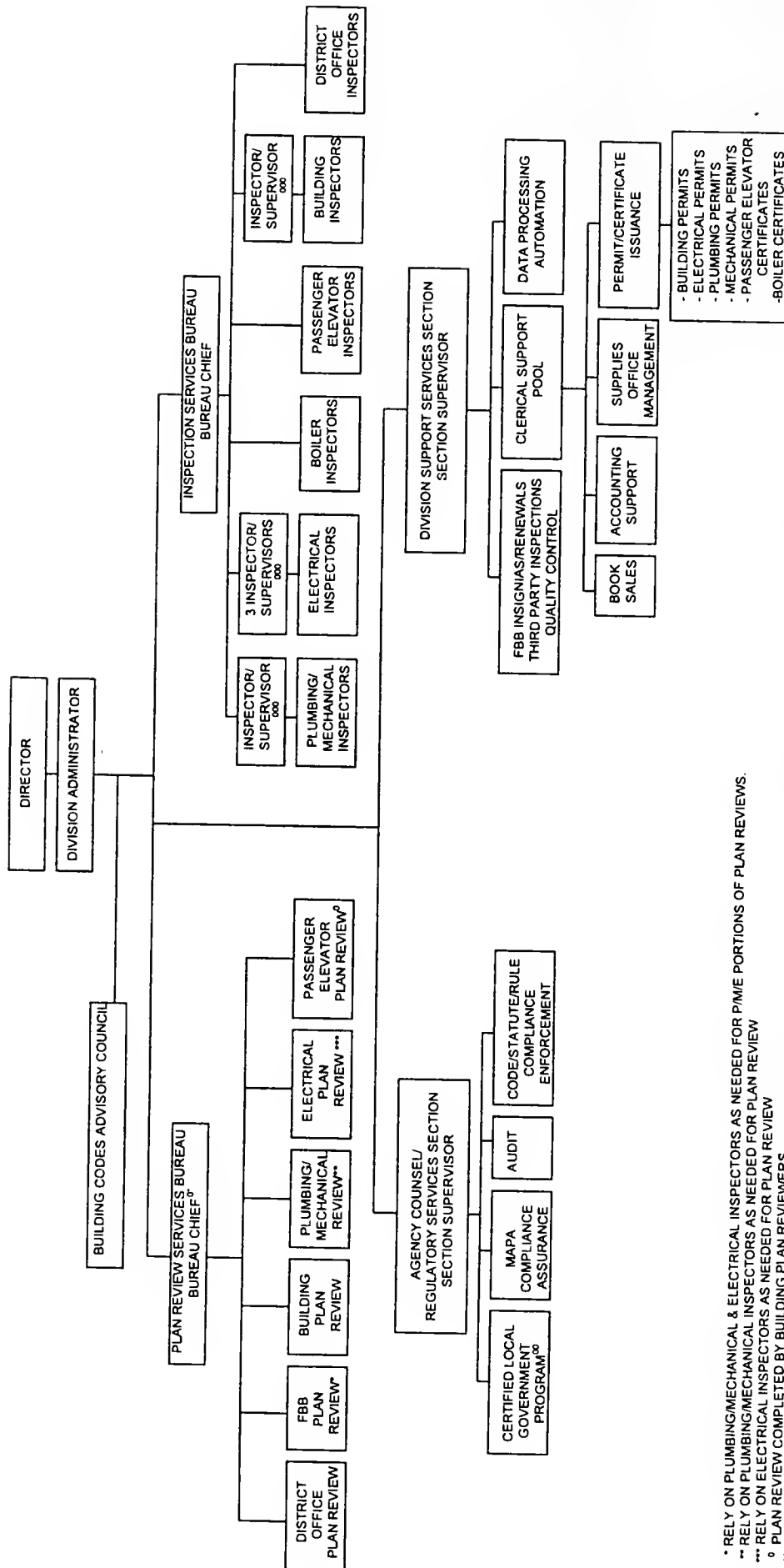
Recommendation #11

We recommend the department develop formal operational policies and procedures and distribute to all bureau staff.

Response:

Concur. The Building Codes Division will develop formal operational policies and procedures for the items and processes noted in the performance audit report plus all other Division operations, to the extent practicable, by December 31, 1998.

ORGANIZATIONAL CHART - DECEMBER 1, 1997 BUILDING CODES DIVISION



* RELY ON PLUMBING/MECHANICAL & ELECTRICAL INSPECTORS AS NEEDED FOR PMIE PORTIONS OF PLAN REVIEWS.

** RELY ON PLUMBING/MECHANICAL INSPECTORS AS NEEDED FOR PLAN REVIEW

g PLAN REVIEW COMPLETED BY BUILDING PLAN REVIEWERS

ooo JOINT EFFORT WITH DIVISION SUPPORT SERVICES SECTION SUPERVISOR, UNDER DIRECTION OF AGENCY COUNSEL/REGULATORY SERVICES SECTION SUPERVISOR

h EACH INSPECTOR/SUPERVISOR WILL SPEND APPROX. 50% OF TIME SUPERVISING 6+ INSPECTORS AND 50% OF TIME INSPECTING A SMALLER THAN NORMAL AREA.

g BUREAU CHIEF WILL RETAIN PLAN REVIEW RESPONSIBILITIES AS TIME PERMITS. EST. 25%*



MONTANA DEPARTMENT OF COMMERCE

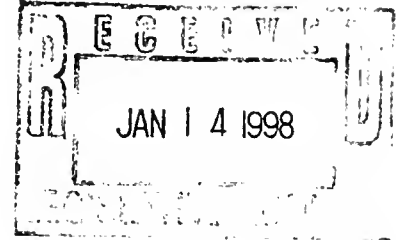
Director's Office
1424 9th Avenue PO Box 200501
Helena, MT 59620-0501

Phone: (406) 444-3494
FAX: (406) 444-2903
TDD: (406) 444-2978

MEMORANDUM

TO: Scott A. Seacat, Legislative Auditor

FROM: Peter S. Blouke, Ph.D. *P. Blouke*
Director



DATE: January 14, 1998

SUBJECT: Department Response To Building Codes Audit

After further review and discussion with Department staff, I would like to make a slight modification to the Department's response to Recommendation #5C of the Building Codes Division Performance Audit.

Rather than require the Local Government Assistance Division include in their contract audits a specific requirement to test financial and administrative compliance with the building code's rules and regulations and to report on their findings to the Building Code Division, we are proposing that a separate audit conducted in conjunction with the normal contract audit be performed to specifically address building code issues.

We believe this is in concert with the recommendation of your staff while maintaining the independence and flexibility of the current Local Government Assistance contract audits. By adopting this procedure, we will ensure each certified community will be audited for compliance with building code requirements.

For your information, I have attached a copy of the Department's proposed rules to implement the policy. If you have questions or concerns please call me.

c: Jim Brown
Newell Anderson

New Rule I

Annual Report

(1) A local government with a certified code enforcement program shall submit to the department of commerce, building codes division detailed and fully documented reports on an annual basis.

(2) The date of the initial annual report for a local government with a previously approved code enforcement program in existence on June 30, 1998, shall be August 1, 1998.

(3) Annual reports shall be filed with the division on or before August 1 of each year for the immediately preceding fiscal year.

(4) The annual report shall contain the following information:

(a) a map and legal description of the jurisdictional area;

(b) a list of building related codes, with edition dates, being enforced with copies of adopting ordinances;

(c) a list of structures subject to and a list of structures exempted from the building related codes;

(d) a schedule of fees charged for permits;

(e) an accounting of the collection and expenditure of fees and charges for the immediately preceding fiscal year;

(f) a copy of the ordinance establishing the appeal procedure or the acknowledgment that the Uniform Building Code appeal procedure will be followed, a list of the members of the appeal board and their qualifications;

(g) the current plan for enforcement, and;

(h) a list of employees inspecting, reviewing plans or approving any installation with description of responsibilities and qualification status of each employee as provided in New Rule II.

Authority: 50-60-203, 50-60-302

Implements: 50-60-302

Reason: This rule consolidates into one rule the various requirements which the division must review to assure that certified local government maintain compliance with rules and statutes.

NEW RULE II

Audit

(1) A local government with a certified building code enforcement program shall require its independent auditor, in conjunction with the audit required by 2-7-503, to perform agreed-upon procedures to determine whether the local government has complied with the financial related statutes and administrative rules relating to local building code enforcement programs. The agreed-upon procedures engagement must be performed and reported in accordance with standards prescribed by the American Institute of Certified Public Accountants. The engagement must include, but is not limited to, procedures necessary to determine:

(a) all construction-related fees or charges imposed and collected by the local building code enforcement program are used only for the building code enforcement program which consists of necessary and reasonable costs directly and specifically identifiable for the administration and enforcement of building, mechanical, plumbing and electrical codes;

(b) that indirect costs are charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges;

(c) that if indirect costs are waived for any other local government proprietary fund indirect costs are waived for the local building code enforcement program;

(d) that indirect charges are limited to the charges that are allowed under federal cost accounting principles applicable to a local government;

(e) that the collection and expenditure of all fees and charges are fully documented;

(f) that fees and charges are not accumulated in excess of the amount necessary to operate the local building code enforcement program for 12 months; and

(g) that excess fee and charge accumulations are placed in a reserve account and used only for the local building code enforcement program.

(2) The cost of the agreed-upon procedures engagement shall be paid by the local government but may be considered a direct cost of the code enforcement program.

(3) Copies of the report on applying agreed-upon procedures shall be filed with both the building codes division and the local government assistance division of the department of commerce.

Authority: 50-60-203, 50-60-302

Implements: 50-60-302

Reason: This rule provides for an audit of local government building code enforcement programs to the same standard required by the State of Montana Single Audit Act, Title 2, Chapter 7, Part 5, MCA. These audits are to be performed in conjunction with the local government audits required by the Single Audit Act. As such, the results of the audit are not available until one year following the close of the fiscal year or the fiscal biennium as may be selected by the local government. This professional and independent audit will serve to verify the annual accounting provided by the local governments as part of the Annual Report.

